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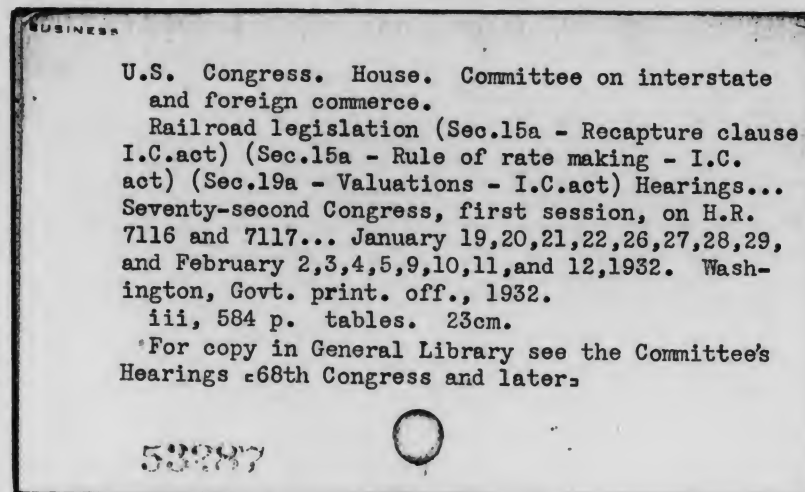
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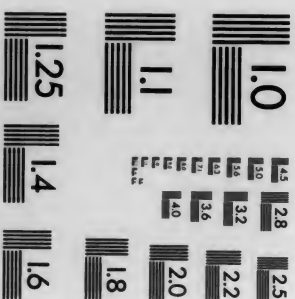
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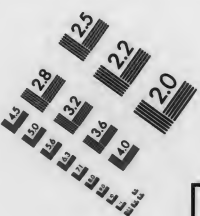
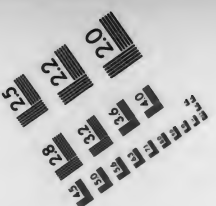
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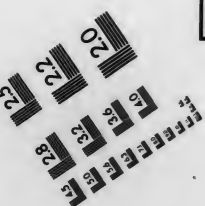
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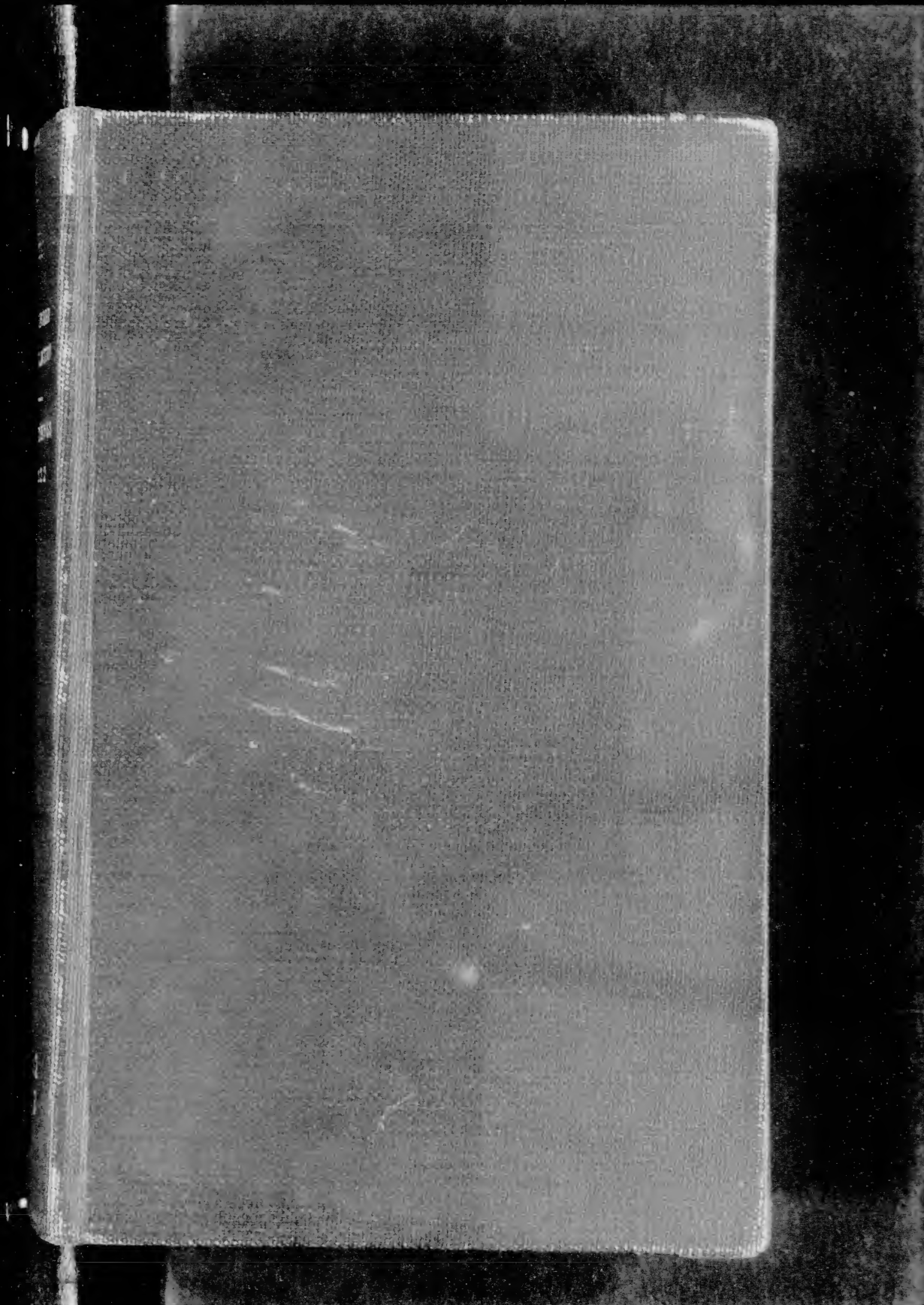


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# RAILROAD LEGISLATION

(Sec. 15a—Recapture Clause—I. C. Act)  
(Sec. 15a—Rule of Rate Making—I. C. Act)  
(Sec. 19a—Valuations—I. C. Act)

## HEARINGS

BEFORE

### THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

## H. R. 7116 and 7117

TO AMEND SECTION 15a OF THE INTERSTATE COMMERCE ACT, AND  
FOR OTHER PURPOSES

JANUARY 19, 20, 21, 22, 26, 27, 28, 29, and FEBRUARY 2, 3, 4, 5, 9, 10, 11, and  
12, 1932



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1932



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III

## RAILROAD LEGISLATION

TUESDAY, JANUARY 19, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.

The CHAIRMAN. The committee will come to order.

It is our purpose from now on to start promptly at the hour at which the committee is called.

We announced this hearing on 15a. The Interstate Commerce Commission has several recommendations in its last annual report, some of which have been made in several of their reports heretofore.

The committee is going to try to take these recommendations up. There are 19 recommendations and we will take the more important ones and go through them as fast as we can, with this end in view, that the Congress and the Interstate Commerce Commission, the railroads and the shippers, all may know what to expect from this session of Congress at as early a date as possible.

The first recommendation I see made is for a revision of 15a, one of the much debated sections of the transportation act of 1920.

We hope to go through this section thoroughly with witnesses that we hope can develop the facts and put the whole situation before us, so that when we, in executive session, begin to rewrite this section, we can do it with as much a degree of intelligence as possible.

### STATEMENT OF HON. JOSEPH B. EASTMAN, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

The CHAIRMAN. We have Mr. Eastman with us this morning, as a representative of the Interstate Commerce Commission, and Mr. Commissioner, we desire to give you such time as you desire to take, and if you desire to make a statement without interruption the chairman will attempt to protect you in that, which no chairman of this committee has ever been able to carry out, but we should like for you to proceed as you think best, in order to present your views, or the views of the commission to this committee.

Colonel THOM. May I ask, Mr. Chairman, if the plans of the committee are sufficiently mature to enable you to say what the sessions of the committee will be? I ask that because we would like to know as to what days you will sit and how you will pursue the inquiry. And further, because of certain matters pending in the Senate, which we desire to attend and we would like to avoid conflict, if

possible, and if we could be advised what you purpose to do, and when you are going to hold your sessions, we would appreciate it.

The CHAIRMAN. We are going to hold sessions at least four days in the week, until we complete this subject. We will hold sessions, Tuesday, Wednesday, Thursday, and Friday of each week until we complete this hearing.

I have asked Mr. Eastman to make a statement, and the members of the committee desire to make an investigation as to section 15a, and that will take a sufficiently wide range to develop all of the facts.

Colonel THOM. And what hours will the committee sit?

The CHAIRMAN. Mr. Eastman will probably be before the committee two days, or three, to-morrow and Thursday. The committee will meet from 10 to 11.45.

Colonel THOM. Not in the afternoon?

The CHAIRMAN. The bells for the assembly of the House ring at 11.45, and it is the purpose of the committee to adjourn in time to be on the floor of the House at 12 o'clock. We will meet promptly and begin at 10 o'clock.

I think that some shippers' organization wants to follow Mr. Eastman. It seems that that will suit their convenience much better than to wait.

All right, Mr. Eastman.

Commissioner EASTMAN. My name is Joseph B. Eastman. I am a member of the Interstate Commerce Commission. I speak here for the commission, so far as conclusions are concerned. However, the commission has not seen the statement which I have prepared, so that I can not say with any assurance that I speak for them so far as reasons for the conclusions are concerned.

I want to apologize before I start for the length of this statement. If I had had a little more time in preparation, I might have been able to condense it more, but it contains facts I thought should be made a part of the record.

So far as interruptions are concerned, Mr. Chairman, I have no objection to them, but I think it likely that many questions that might arise will be covered by my statement before I get through.

Section 15a of the interstate commerce act became law as a part of the transportation act, 1920. Briefly, it requires the commission, "in the exercise of its power to prescribe just and reasonable rates," to see to it that carriers, as they are defined in the section, will as a whole throughout the country or in such rate groups as the commission may designate, "under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation."

During the two years beginning March 1, 1920, the commission was required to take  $5\frac{1}{2}$  per cent as the fair return, but given discretion to add an extra one-half per cent "to make provision in whole or in part for improvements, betterments, or equipment." In Increased Rates, 1920 (58 I. C. C. 220), this extra one-half per cent was added by the commission. At the end of the specified two years the commission was empowered to determine from time to time what per-

centage would constitute a fair return, giving "due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation." In Reduced Rates, 1922 (68 I. C. C. 676), the commission fixed the fair return at 5.75 per cent. All taxes, including the Federal income tax, are deducted before arriving at this return. The commission observed that it "would be approximately the equivalent of a fair return of 6 per cent, out of which the Federal income tax was payable." No change has since been made in this percentage of fair return.

At this point it should be stated, since there has been much misunderstanding on the point, that this fair return is quite a different thing from the fair return of which the Supreme Court has held that a public service company can not under the Constitution lawfully be deprived. The latter applies to individual companies. The section 15a fair return is an average for all the railroads in the country or in any designated rate group. There is no constitutional guaranty protecting such an average return, which is based on the earnings of all companies good, bad and indifferent, many of which were unwisely or improvidently built and would be unable to earn a fair return if allowed to charge whatever they pleased. There are few industries which are able, even in good times, to earn 5.75 per cent in their entirety. This average fair return, as defined by the section, may therefore properly be made lower than might be fixed for an individual company.

In arriving at value for the purposes of the section, the Commission was authorized to utilize the results of its investigation under section 19a and directed to "give due consideration to all the elements of value recognized by the law of the land for rate-making purposes."

It was recognized that it would be impossible "to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are indispensable to the communities to which they render the service of transportation," without enabling some of them to earn a "net railway operating income substantially and unreasonably in excess of a fair return"; and for that reason it was provided that any carrier receiving in any year in excess of 6 per cent on the value of its railway property should hold one-half of such excess as trustee for, and pay it to, the United States. The commission was given the duty of collecting this recapturable income.

The income so recaptured is to be placed in a revolving fund, called the general railroad contingent fund, to be administered by the commission. It is to be used "in furtherance of the public interests in railway transportation either by making loans to carriers to meet expenditures for capital account or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to the carriers." Before making any loan, the commission must find that such loan is "necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning

power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan." It is also directed to "prescribe the security to be furnished, which shall be adequate to secure the loan." The interest rate on the loans is fixed at 6 per cent. The provisions with respect to leasing equipment or other facilities are similar.

Section 15a is a unique provision in the public regulation of railroads and utilities in this country. I know of no provision which closely parallels it. It was not proposed by the Commission or by the railroads or by the shippers, but originated with an association of railroad security owners of which the late S. Davies Warfield was president. When this committee in 1919 reported out a bill providing for the return of the railroads to private ownership, this provision was not included. On the contrary it was condemned. The bill reported out by the Senate committee, however, included such a provision. When the bills finally came to conference, the House receded from its position and agreed to the present section 15a, which was the provision included in the Senate bill somewhat modified. In its original report of November 10, 1919 (Rep. No. 456, 66th Congress, 1st Sess.), which I believe was unanimous, this committee stated its opposition to such a provision in words which were prophetic. I quote the following passage:

This form of guaranty is based upon the ability of the commission to so fix the level of rates within each group system, or region, as will produce the percentage on property investment account, or on valuation, as fixed by Congress. We question the ability of the commission, or any regulatory body, to accomplish this result. Is it well known that freight and passenger revenues fluctuate from year to year, and even during a single year. These fluctuations may be due to drought—affecting crops throughout great areas—or may be due to crop failures due to pests, or may be due to floods destroying tracks and bridges and delaying traffic, or may be due to economic causes national or international in scope. The difficulty, and in fact the impossibility of maintaining the level of rates required to produce the percentage rate fixed by the statute should make us hesitate to adopt any such plan. If the rate level must be changed to meet such fluctuations there can be no stability of rates. As business is interested almost as much in the stability as in the amount of the rates, business would inevitably suffer as the result of any such plan.

Every one of the contingencies then prophesied has since come to pass. You are familiar with the crop failures due to drought in recent years; the crop failures due to boll weevil, the grasshopper, and other pests; the disastrous floods in the Ohio and Mississippi valleys; the economic depression of 1921, and the present far worse depression due to causes which are international in scope. And a very important contingency which this committee apparently did not foresee has been the development of competing forms of transportation.

In speaking of the recapture provision in its 1919 report, this committee suggested that the "prospect of sharing the surplus with the Government, or with labor, leads to extravagance in expenditures." It further said:

While this guaranty plan is propounded with much confidence as the solution of the problem of the so-called weak sisters, we believe that such elaborate machinery—so elaborate as to be unworkable in some of its parts—will result in disappointment. We believe that equally good, if not better, results can

be obtained by the provisions of the pending bill. These provisions would authorize the commission to permit the voluntary consolidation of the weaker with the stronger lines. By the application of minimum as well as maximum rates to permit a longer and weaker line to get a greater share of the business than heretofore, and with the initiative in the commission to establish joint rates and through routes, and the division of the rates, would still further aid the short or weak lines.

The opinion of the commission upon section 15a was not, so far as I can ascertain, sought by Congress. However, on October 14, 1919, Commissioner Aitchison, who was then chairman of the commission, in an address to the National Association of Railway and Utilities Commissioners made the following comments, among others:

Some practical difficulties occur in carrying out a legislative direction to raise a precise sum of money or to produce a certain percentage of return. Stability in rates is regarded by the users of railroads as of great importance, as investments are made and contracts are undertaken upon long-established relationships, and unforeseen rate fluctuations often have an extremely disturbing effect. Great financial hardships have followed unanticipated rate changes. If a certain fixed percentage is to be yielded each carrier, or each group of carriers, year by year, periodical rate fluctuations will be inevitable.

Whether a schedule will yield a certain percentage of return depends on the growth or shrinkage of business, the rise and fall in the prices of manufacture and labor, the extent to which shrinkage in traffic can be met by reduced operating expenses, and the efficiency of management and labor. Each of these variable factors has a marked effect on the net income in the railroad business, and each is beyond the control of the rate-regulatory tribunal.

Jerome J. Hanauer, partner of Kuhn, Loeb & Co., is also entitled to be included among the prophets. I always like to give credit to a banker. Testifying before the commission on January 18, 1922, he said, in speaking of section 15a:

In enacting this law, Congress omitted to provide that the shippers of the country should furnish the traffic necessary to make the law effective. The mandatory provisions of the act violate the economic laws in so far as they require rates to be increased in times of depression when there is a minimum demand for transportation and to decrease the same in times of great prosperity, when the demand is at its maximum. At no time since the passage of the act have the carriers earned the permissive return, and, contrary to the belief held by many, there is no guarantee whatsoever. The companies are to earn the return if they can, but if they do not, they are not even permitted, except to a limited extent and for special purposes, to recoup themselves out of earnings in excess of the permissive rate earned in more prosperous times. Transportation companies are subject to the same economic forces as any other business endeavor; they will have good years and bad years and, unless they have a guaranty (which I do not favor), they must be permitted to build up a substantial surplus in the good years, to enable them to survive in times of depression. Only thus can their credit be stabilized, so that they will be able to give to the country that efficient service, without which its industrial life will be stifled.

Upon cross-examination Mr. Hanauer stated that he would be in accord with the repeal of section 15a "if it was made clear to the public why it was repealed." He was against giving the impression that it had been repealed "because 6 per cent had been considered an excessive rate," but if it was repealed with a preamble that it is "fundamentally uneconomic to attempt to limit the earnings of a property in good times without guaranteeing them anything in poor times," then he would be heartily in favor of it.

He further said that nobody in the world could make rates so as to produce a certain amount, and that as a matter of fact "it would have just exactly the reverse effect."



Before taking up the rule of rate-making in section 15a and the changes which the commission believes should be made in it, I desire to discuss the recapture provisions which supplement that rule. The commission is unanimously of the opinion that these recapture provisions should be repealed in toto, not only for the future but retroactively from the very beginning. Let me first describe what is necessary for the commission to do under the provisions.

There were 1,144 operating steam railway companies reporting to the commission in 1920 and 959 in 1930. The procedure which I am about to describe must be followed each year. We must first determine, in view of the provisions of paragraph (6) of section 15a, which of these companies are under common control and management and operated as a single system, and combine their returns accordingly. The next step is to determine from an inspection of the returns the systems whose earnings were so low that they can safely be eliminated from further consideration. In the case of the remainder we must then proceed to determine for each company or system two facts, (1) the value for rate-making purposes of its railway property held for and used in the service of transportation, and (2) the true amount of its net railway operating income.

The determination of value requires, first, a determination of the property which is used by the carrier, regardless of ownership, and the elimination of all property which is not used for transportation purposes. That being done, the original cost must be ascertained as nearly as may be; the cost of reproduction of the structural property at current prices; the amount of depreciation existing in that property; the present value of the land, based upon the values of adjoining lands; the amount of working capital necessary; and any other values or elements of value which may exist. I am mentioning only the essentials and omitting minor details. From the facts so ascertained a conclusion must be reached as to the value for rate-making purposes.

The ascertainment of net railway operating income requires a careful audit of the income accounts to determine whether they have been correctly kept and, if not, what corrections should be made, and to determine also whether any disproportionate or unreasonable expenditures have been made whose effect was to deplete the real excess income.

In each case, also, after the preliminary basic work has been done by our bureaus, it is ordinarily necessary to present and develop the facts at a public hearing, at which the carrier can have an opportunity to cross-examine our witnesses and submit rebuttal evidence. The hearing, in turn, must be followed by the filing of briefs and argument before a division or the commission, if that be desired.

When section 15a became law in 1920, our Bureau of Valuation was in the midst of the ascertainment of the primary or basic valuations under section 19a, a work which was then far from complete but had to be completed, so far as the basic data were concerned, before values under section 15a could be determined. Our Bureau of Accounts was still engaged in the audit of railroad accounts for the ascertainment of the so-called "standard return" for each carrier which formed the basis of compensation by the Government during the Federal control period. Upon that bureau the transportation act, 1920, imposed the additional heavy burden of auditing

railroad accounts to determine the amounts payable under the guaranties of sections 204 and 209. It was some considerable time before the Bureau of Valuation was in a position to proceed actively with the section 15a valuations, and before the Bureau of Accounts could clear its dockets sufficiently of the special work imposed upon it to begin the recapture examinations.

In the meantime it was certain that recapture would involve litigation in the courts, first with respect to the constitutionality of the provisions of section 15a, and second, in the individual cases with respect to the validity of our valuation and possibly, also, of our determination of net railway operating income. The recapture provisions were held to be constitutional in *Dayton-Goose Creek Ry. v. U. S.* (263 U. S. 456), decided January 7, 1924. While this litigation was proceeding, the commission had been preparing a test case, which it was hoped would clarify the valuation and other principles to be followed in the recapture work. In view of its status as a test case, every opportunity was given to the railroads, the State commissions, and the public generally to be heard prior to its decision, and the report was most carefully and elaborately prepared. This case was decided on February 15, 1927, *Excess Income of St. Louis & O'Fallon Ry. Co.* (124 I. C. C. 3).

As anticipated, this case went to the courts and it was finally decided by the Supreme Court, adversely to the commission, on May 20, 1929, in *St. Louis & O'Fallon R. Co. v. U. S.* (279 U. S. 438). The result was disappointing to us, not only because the decision was adverse, but because it did not clarify the principles of valuation for rate-making purposes. It rested on the ground that we had not considered the element of value which it termed "present or reproduction costs." The weight to be given that or any other element of value was not determined.

Following this Supreme Court decision, the commission proceeded with the preparation of another test case. This was decided April 7, 1931, *Excess Income of Richmond, F. & P. R. Co.* (170 I. C. C. 451). In it the commission endeavored to meet the Supreme Court's views, as nearly as it could determine them. It not only considered but it gave weight to current reproduction cost. Whether or not it gave proper weight to this and other so-called elements of value remains to be decided. The time set for complying with the order expired some time ago, but there has been no compliance and the case is headed for the courts.

Final reports and orders have been issued in eight other cases, all small. One is about ready to be issued. Tentative reports of division 1 have been served in 85 cases. Twenty are about ready for service. Fifty-six are in process of preparation. Ninety-three cases are awaiting submission of data by the bureaus, prior to the preparation of tentative reports. In the procedure now followed, tentative reports by division 1 are served after consideration of the data prepared by the bureaus, and these become final if no protests are filed. In the event of protests the case is set for hearing, followed by briefs and argument. Prior to the adoption of this procedure, it was the custom to hold a hearing on the return of the carrier, after which a proposed report by the examiner was served, with opportunity to file exceptions and argue. In eight cases under this former procedure, proposed reports have been served. In 24

others, arguments have been concluded but no proposed report has yet been served. This covers in all 296 cases which are on what is called the current recapture program, embracing in general the period from 1920 through the year 1927. It should be understood that each case includes from one to eight recapture years, each year requiring a separate ascertainment of value and net railway operating income. There are 129 other cases in the same period scheduled for consideration but not on the current program. Comparatively little recapture work has been done or is yet scheduled for the years 1928, 1929, 1930, and 1931.

It may be of interest to know that, treating each year for each carrier as a separate examination, the Bureau of Accounts has made, up to January 1, 3,854 accounting examinations to determine recapturable income. In 3,015 cases there has been a final determination and in 839 cases a tentative determination. Combining these, in 2,386 cases the bureau increased and in 1,155 cases it decreased the income reported. In 313 cases it made no change. The aggregate net railway operating income determined was \$3,828,615,930.05, which was \$62,141,125.54 more than the amount reported by the carriers.

It is impossible to make any accurate estimate of the amount due under the recapture provisions, prior to final reports and orders. And even then the orders may be upset by the courts. It is only possible to make a very rough estimate, which must be given with all manner of reservations and to which it would be a mistake to attach much weight. Such an estimate, however, has been prepared covering the period from 1920 to 1930, inclusive. The total is \$378,398,194. Of this, \$224,543,398 is included in the present recapture program and is probably a more nearly accurate estimate than the remainder. In many cases it was necessary, in preparing this estimate, to take the basic valuation and bring it up to date by adding net subsequent additions and betterments at cost, because of the lack of other available data. This was substantially the method followed in the O'Fallon case which was rejected by the Supreme Court. In all probability, therefore, the \$378,398,194 is an overestimate.

It is of great interest to note that these estimates show nothing due from such roads as the Pennsylvania, the Burlington, the Northern Pacific, the Illinois Central, the Chicago & North Western, the Milwaukee, the Missouri Pacific, the Lehigh Valley, the Erie, the Rock Island, and other important roads which might be named. On the other hand, they show amounts due from the four large roads which have recently gone into receivers' hands, namely the Florida East Coast, the Seaboard Air Line, the Wabash, and the Ann Arbor. The amount shown as due from the Seaboard Air Line is materially greater than the amount shown as due from the Louisville & Nashville. A comparatively large amount is shown as due from the Frisco and also from the Nickel Plate. A larger amount is shown as due from the Gulf, Mobile & Northern, which has always been regarded as a weak line, than from the Louisville & Nashville, which has always been regarded as strong. Included in the list are such roads as the Kansas City, Mexico & Orient and the Detroit, Toledo & Ironton. These facts merely go to show that some roads are financially strong because of their conservative capitalization in

comparison with valuation, whereas others are weak because of overcapitalization. Recapture, of course, is based on valuation and not on capitalization. A great number of small roads are included in the list, many of which are controlled by industries.

On December 17, 1931, the general railroad contingent fund held \$13,277,598.50. Of this, \$10,717,922.97 represented payments by carriers and the remainder represented interest accumulations. Of the payments by carriers \$8,796,188.11 was paid under protest and \$1,921,734.86 was paid unconditionally. Of the latter amount, \$9,917.72 was paid in whole or in part under final orders of the commission. Most of the payments have been by small or comparatively small roads. Considerably more than half came from railroads controlled by the iron and steel industry.

I made a computation yesterday, and I discovered that out of the \$10,717,922.97 which had been paid in, over \$8,000,000 had been paid in by railroads controlled by industries and the larger part of that by railroads which are controlled by the United States Steel Corporation, the Bethlehem Steel Corporation, and other iron and steel industries.

I come now to the reasons why we believe the recapture provisions should be repealed. From the standpoint of logical theory there is much to be said for these provisions. The objections to them are practical rather than theoretical.

Present conditions have brought sharply into the foreground what is perhaps the strongest objection of all. For the moment practically all the railroads are financially weak, and nobody knows how long this condition will continue. It is probable that the revival of their credit will lag very considerably behind the revival of business conditions. While I believe that their traffic and earnings will ultimately be restored, they have a hard struggle ahead, not only with business conditions but also with competing forms of transportation. Repeal of recapture for the future is not of much present importance, for there is likely to be little, if anything, to recapture for some time to come. Retroactive repeal covering the past is of very great importance. To the extent that we find amounts of any considerable size due in the proceedings now pending, there are few, if any, railroads which have cash enough on hand to pay them, and still fewer which could do so without robbing Peter to pay Paul. To obtain the necessary cash it would for the most part be necessary to issue securities to replenish their treasuries, and there are few which are now able to issue securities on reasonable terms, if at all. Some will have to borrow money from the Reconstruction Finance Corporation to meet maturities, and it is probable that among them will be roads of past excellent credit. There are better uses to which the slender railroad credit, so far as it is available, can be put than to raise cash to pay to the Government excess income of the past which in most cases is more than balanced by the income deficiencies of the present.

Railroads are exceedingly sensitive to the changing industrial conditions in the territory in which they operate. Consequently they are likely to have severe fluctuations in earnings. The Florida boom brought temporary prosperity to the railroads operating in that region. Discovery of oil on its lines changed the Kansas City, Mexico & Orient almost overnight from a derelict to a fairly good earner. In

1920 the southern lines were in relatively good and the New England lines in relatively bad financial condition. This relative situation is now reversed. The floods in the Mississippi Valley hurt the railroads in that region; and the anthracite carriers, which were once among the most prosperous, have suffered from the decline of that industry. The present depression has hurt all the railroads terrifically. These are merely illustrations. These fluctuations were foreseen by this committee in 1919, but it is doubtful whether they were foreseen by those who conceived section 15a and the recapture provisions. The periods governing recapture are very short—only 12 months. They do not permit these fluctuations to be averaged. A road may have one fat year followed by several lean years. Under the present law the lean can not compensate for the fat. In the case of some little roads we are actually in the situation of having a recapture claim against a carrier which is about to be abandoned and sold for junk.

Not only that but although the recapture plan was designed to take from the strong for the benefit of the weak, it does not by any means always operate that way. I have indicated the reason. Some railroads are strong because they are undercapitalized or have valuable resources apart from their railway property. Others are weak because they are overcapitalized or have outside investments which are a drain upon them; and those which are in this latter condition make as great a show of earnings as possible, sometimes to the detriment of the property. But the recapture law recognizes no such differences in conditions, because it is based on the value of railway property regardless of capitalization, and upon net railway operating income regardless of other sources of or drains upon income. There may be poetical justice in this, but the practical differences in which it results are obvious.

To my mind one of the most important practical objections to valuation is the endless litigation to which it leads. A railroad of any size with a well-equipped law department and staff of experts has nothing to lose and everything to gain from contesting and delaying recapture in every possible way, first in the proceedings before us and then in proceedings before the courts. The opportunities for litigation are legion, particularly because of the great uncertainties in the valuation doctrine, to which I shall advert in another part of this statement. As a matter of fact it can not be said with certainty that when these cases get into court, as many of them will, we shall not have to try out the valuation facts as well as the law all over again before the court or possibly before a jury. Such continual litigation is undesirable and unwholesome from many points of view. Personally, I dread to think of the important principles of public regulation which will be involved being determined in cases where the primary issue will be whether money shall be taken from a company which can perhaps ill afford to give it up. Without any reflection on the courts it is like the difference which every lawyer knows exists between construing a statute in a criminal as contrasted with a civil proceeding.

The question arises as to what shall be done with the money when it is recaptured. Until very recently we could say with entire accuracy that as section 15a is drawn the money would probably not be put to use even if it were available. Before a loan can be made

we must not only find that the "prospective earning power of the applicant and the value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan," but we must further insist upon security "which shall be adequate to secure the loan." Until the full force of the present depression was felt, any carrier which could furnish such security could obtain a loan elsewhere at better than 6 per cent. This should always be true in normal times.

It is not true under the unique conditions of the present, and undoubtedly a general railroad contingent fund of \$300,000,000 or thereabouts would now be very useful if it were available. But we expect that these conditions will be temporary and we hope that when once they depart they will not return again for many years. If we had been able to accumulate this fund, it is probable that among the candidates for loans would be carriers from whom the fund had in part been recaptured. An opportunity to borrow from the Government when other sources of credit are shut off is useful to tide over an emergency, such as now exists, but under normal conditions the opportunity to go deeper into debt will not go far to solve the problem of the weak lines.

A further objection is the expense imposed upon both the Government and the railroads by the process of recapture, and the fact that where there is a likelihood of recapture the tendency is toward extravagance in expenditures. This is difficult to prove, but we believe it to be the case, and also, have some evidence.

Summing up the situation, we are of the opinion that the difficulties, disadvantages, and dangers of recapture far outweigh its possible advantages. This is true of the future, but it is even more true of the past, particularly under the conditions which now exist and may be anticipated for some time to come. This being our conclusion, we see no escape from the conclusion that the present recapture proceedings should be discontinued and the money returned which is now in the contingent fund. This money can not in fairness be retained unless we are prepared to go ahead with recapture and treat all roads alike. That we do not recommend, for the reasons which I have given.

Nor do I feel clear that even in theory recapture of excess income is sound procedure. There is something incongruous in a system of regulation which finds it necessary to permit carriers to earn more than they ought to earn, and meets the difficulty by taking money away after it is received. I realize the effect of the competitive rate situation set forth in paragraph (5) of section 15a, but I find it difficult to believe that recapture is the only way of dealing with the so-called problem of the strong and weak roads. In its report in 1919 this committee suggested other ways. One is a gradual spread of consolidations and unifications. Another is adjustment of divisions of joint rates or reduction of local rates. And another, which this committee did not suggest and which I mention with all due deference to those who disagree, is an appropriate pooling of rate increases so that the benefits will accrue in due measure to those carriers whose needs constitute the justification for the increase.

So much for the recapture provisions. I turn now to the rule of rate making in section 15a. The impelling motive, I believe, for



that rule was distrust of the commission on the part of investors. Theretofore no similar rule had existed and the only mandate upon the commission, so far as the level of rates was concerned, was to fix just and reasonable rates. There had been much dissatisfaction among investors with the action of the commission during the period from 1910 to the beginning of Federal control in forbidding or limiting proposed general increases in rates, and it was charged that the result had been to impair the credit of the railroads and prevent them from meeting adequately the transportation needs of the country. It was also feared that the Constitutional prohibition against confiscation was an insufficient protection.

To explain this latter point, the idea was that carriers in a competitive group had no protection unless the strongest carrier in the group was in position successfully to assert confiscation of its property. The rates being competitive, the weaker lines had to meet them or go out of business. The stronger line might not be disposed to assert in the courts its Constitutional rights. Even if it were so disposed and succeeded in the assertion, the increase it could secure in the rates would only be that which would bring its own earnings above the line of confiscation of its own property. Such a measure of relief would fall below, perhaps much below, the measure of the constitutional rights of the weaker lines which had to follow the stronger lines in their rates. In other words, the theory was that prior to section 15a we could govern our regulation of rates, so far as the Constitution was concerned, by the situation of the strongest lines. I can not discover that the commission ever followed this theory. In fact it was expressly repudiated in several cases. For example in *Kindel v. N. Y., N. H. & H. R. R. Co.* (15 I. C. C. 555), the commission said:

As before suggested, we can not, in determining competitive rates, select that railroad which is the shortest or most advantageously situated, and limit the rate to what would allow that property fair earnings. We must consider the entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving those Colorado points by reasonably direct lines.

The point was reviewed again in *Receivers and Shippers Asso. v. C., N. O. & T. P. Ry. Co.* (18 I. C. C. 440), and the statement made that the commission had "no doubt as to the correctness of this principle."

However, this dissatisfaction and these fears, whether or not they were justified, were in the minds of investors and were, no doubt, the impelling motive behind section 15a. The effect of that section was thus stated in behalf of the carriers in the recent 15 Per Cent Case:

In substance the constitutional right of a single carrier to a fair return which could not as a practical matter be asserted was extended to the group as a whole and the Commission was given a mandate to render the right productive.

It seems clear that those who were responsible for section 15a believed that the regulation of the general level of rates could be reduced practically to a formula, and that they could be moved up or down so as to result in substantially a uniform average level of earnings. It is also clear from its 1919 report that this committee did not then believe that this theory was sound. Let us see what

happened. In 1920, very quickly after the return of the railroads to private ownership, the commission approved increases in freight rates of 40 per cent in the Eastern group, 35 per cent in the Western group, 25 per cent in the Southern and Mountain Pacific groups, and 33.3 per cent between groups. It also approved an increase of 20 per cent in passenger fares and the continuance of the Pullman surcharge. This was substantially what the carriers asked, and there were no complaints on their part that we had granted too little. Nevertheless the new rates fell far short of producing the desired return, and the reason was that shortly after they became effective the business depression of 1921 set in.

Effective January, 1922, the commission ordered reductions in the rates on grain, grain products, and hay in western territory ranging from 10 per cent on wheat to 22 per cent in some cases on coarse grains and upon our recommendation the rates in that territory on livestock for the longer distances were reduced. The carriers followed this with a voluntary reduction of 10 per cent on practically all agricultural products throughout the country. They also made numerous other voluntary reductions, such as on nonferrous metals, export grain, bituminous coal to Lake Erie ports, sand and gravel in eastern territory, ore, lumber, and petroleum and its products. Some proposed reductions we refused to allow.

In 1922 came our general 10 per cent reduction, affecting only rates which had not theretofore been reduced. At that time there were widespread complaints that rates were too high for healthy business conditions. Two cabinet officers appeared before us and testified to that effect, at least so far as many important commodities were concerned. In our report we were able to say that the carriers admitted that rates were too high and must come down, although they urged that they should not be further reduced until the costs of transportation were further reduced. We were moved by the evidence before us to require a reduction, and our order was not contested by the railroads. Whether or not we were right is a question of judgment; and there are undoubtedly many in the country who now think we were wrong. It is of some significance, however, that there was at that time no dissent in the commission to the necessity for a reduction, although it included members of conservative tendencies. There were differences of opinion as to what reduction should be required, but none as to the general principle.

The result appeared to vindicate the judgment of the commission. Perhaps it was a coincidence, but following the reduction the revenues of the carriers began to improve rapidly. Thereafter and up to the end of 1929 the financial condition of the railroads throughout the country was in general regarded as favorable, with certain exceptions. Credit conditions were in general good. Very large issues of securities were marketed on favorable terms, dividends increased, surplus accumulations increased very rapidly, and financing was even done to a considerable extent by the issue of new stock. No desire for a general increase in rates was manifested by the carriers in either the eastern or southern districts. In the western district a general increase of 5 per cent was sought in 1925, principally because of the unsatisfactory financial situation of the carriers in that portion of the western district which is known as western trunk-line territory.



This was denied in Revenues in Western District (113 I. C. C. 3). The need for an increase in revenues in western trunk-line territory was admitted. The commission, however, was not convinced that a sufficient emergency existed to justify a general increase in the rates on all commodities. It called attention to the great inequalities in rates in that territory and in effect advised the carriers to seek the needed increase in revenues, not by a horizontal increase in all rates, but by a readjustment which would place the burden where it ought to be borne. To further such a readjustment, it proceeded on its own initiative with an investigation of the class rates in western trunk-line territory.

While the average return throughout the country never reached the stipulated figure, conditions were in general sufficiently favorable and prospects for the future appeared sufficiently good, so that there seemed to the commission, and except in western territory to the carriers, no adequate reason for subjecting industry to the disturbance which an increase in the general freight rate level would entail. There were, moreover, factors operating adversely and upsetting in unforeseen ways calculations as to earnings. The most important of these was the continual falling off of passenger traffic. This is well illustrated by certain figures introduced by Professor Cunningham of Harvard University in a case now pending before the commission. He is representing in that case, by the way, certain railroads. He estimates that in the 5 years, 1921-1925, the freight traffic of railroads in the eastern district earned 4.994 per cent on our tentative valuation, and their passenger traffic 2.690 per cent. In the 5 years, 1926-1930, the corresponding earnings were 6.678 per cent for freight and 0.778 per cent for passenger. In the southern district the earnings in the first period were 6.157 per cent for freight and 1.828 per cent for passenger, whereas in the second period they were 7.038 per cent for freight and a deficit of 2.787 per cent for passenger. Other factors from time to time affecting earnings adversely were floods, droughts, and crop failures from various causes, and the rapid development of competing transportation agencies, such as motor trucks, pipe lines, and barge lines. Of course, when the present depression brought in its wake a tremendous shrinkage of traffic, railroad earnings went to pieces. It is also well to remember that during the period of apparent prosperity in this country, that prosperity was never shared by certain great industries which are very important producers of traffic. I refer particularly to agriculture and coal.

I have gone over this history, not by way of apology for the commission, but merely to show the great practical difficulties in attempting to maintain, even approximately, a constant level of railroad net earnings, regardless of changes of one sort or another in economic conditions. We believe, as this committee did in 1919, that it is impracticable to do this. That being so, we further believe that it is unwise and undesirable to continue provisions of law which create the impression that railroad net earnings can and will be brought up to a certain standard in periods when traffic is light for one reason or another, and that they should and will be brought down to that standard when conditions are favorable and traffic is heavy.

In addition to giving the commission authority to prescribe just and reasonable rates, subject always to constitutional limitations, all

that we believe that Congress can wisely and effectively do is to make it very clear in the law that in regulating the general level of rates the commission shall always keep in mind and be guided in its action by the necessity of producing, so far as possible, revenues which will afford over a reasonable period of years a sufficient basis for the maintenance of a national system of railway transportation at all times adequate to the needs of the public; and at the same time make it clear that the rise of revenues with increasing traffic in times of prosperity or their fall with decreasing traffic in times of depression shall not necessarily be regarded as a reason for reducing or increasing rates, as the case may be. It is very important that the latter principle should be embodied in the law.

I might add, that in our recent annual report we suggested that consideration should be given to some provision of law which might require or authorize the railroads to set aside, in times of prosperity, surplus in liquid form, either in cash or readily marketable securities, so that some such reserve would be available in times such as exist at present. While a great many of the railroads have large surplus accounts, for the most part they are invested in their properties, and while they add strength to a company they are not available in the form of cash unless securities are issued for the purpose of replenishing the treasury, and under present conditions such securities can not generally be issued.

So long as the railroads are intrusted to private ownership, there can be no dispute as to the fact that in the long run they can not function successfully and to public satisfaction unless they enjoy earnings which will maintain their credit and attract private capital to the industry. And if they do enjoy such earnings and private capital is attracted, that is the best possible proof that these private agencies are being compensated adequately for the performance of this public service. There may of course be, and undoubtedly are, railroad companies which by reason of overcapitalization or poor location or poor management, can not be supplied with good credit under any reasonable level of rates, even in normal times. But by and large that is not true of the railroad industry, unless it is obsolescent and doomed to be supplanted by other forms of transportation, and I know of no sound reason for believing that to be the case.

Undoubtedly it is going to be no easy task to restore the railroads to good credit. The prime essential is improvement in business conditions and increase in traffic. After that come improvements in operation and service, readjustments of rates, and greater regulation of other forms of transportation. I speak of "readjustments of rates" because of a very positive belief that any attempt to do the job by general increases would be both futile and destructive. Some rates must go down. Others doubtless can and should go up. But that restoration of credit can in time be accomplished I am personally convinced.

I come now to the final part of my statement. You have before you two bills, H. R. 7116 and H. R. 7117. So far as the rule of rate making is concerned, they differ in the fact that H. R. 7116 provides for what may be called a barometer of earnings by which the commission is to be guided, although in no inflexible way. That barometer consists in net railway operating income equal to a fair return,

as defined in the bill, upon an average aggregate rate base for the country as a whole or for such groups as the commission may designate. It differs from the standard now set in section 15a only in the fact that this aggregate rate base is substituted for aggregate value for rate-making purposes, in the fact that what shall constitute a fair return is more specifically defined, and in the further fact that the commission is given more leeway in following this guide. No such barometer of earnings is contained in the shorter bill, H. R. 7117.

So far as a majority of the commission are concerned, they are quite willing to accept H. R. 7117, which does not contain the rate base formula. The only exception is Commissioner McManamy, who believes, if I understand his position, that the commission should be given by Congress a more definite guide than H. R. 7117 would supply. I should say also that in the case of both bills Commissioner Farrell is in doubt about the wisdom and desirability of emphasizing good credit as a guide in the fixing of just and reasonable rates. The consensus of opinion, I believe, prefers H. R. 7117 to H. R. 7116. When we last year recommended to the Senate committee legislation similar to that embodied in H. R. 7116, there were commissioners who were opposed to the rate base formula.

That formula was introduced in the bill as a barometer of earnings, I may say, chiefly because it was felt that, due to possible distrust of the commission, investors might feel better safeguarded if a definite standard should be set up as a guide, even if there were no obligation to follow it implicitly. The country could then watch the progress of earnings and note their deviations up or down from the standard so provided, and bring the force of public opinion to bear upon the commission in legitimate and appropriate ways if it was felt that the commission was erring in its action. It was also believed that the rate base formula recommended provided a fair and reasonable standard. If it is thought that no such standard or barometer of earnings is needed, there is no reason why the commission should object to its omission.

Under the circumstances I shall not undertake at this time any very elaborate discussion of the rate base formula. It may be desirable, however, to make a few comments in view of prevalent misunderstandings. Value for rate-making purposes, as defined by the Supreme Court, is quite a different thing from value in the sense in which that word is ordinarily used. The latter value is determined chiefly by what a property will produce in the way of earnings, and obviously can not be used as a basis in determining what earnings shall be. Value for rate-making purposes can, I think, be defined as the amount on which a company engaged in public service should reasonably be permitted to earn a fair return if it is able to do so. There is nothing in terms about it in the Constitution, but it is a conception of the Supreme Court arrived at in an endeavor to define the point at which public regulation results in confiscation of property rights. This conception was first enunciated in *Smyth v. Ames* (169 U. S. 466), and there can be no doubt that there it was the purpose of the court to protect the public against an untrustworthy railroad property investment account, based in part on unreasonable and extravagant if not dishonest expenditures.

The formula for determining fair value announced in that case has since been repeatedly cited with approval by the Supreme Court.

It enumerates various factors or facts which are to be ascertained as "matters for consideration, and to be given such weight as may be just and right in each case," but it states that there may be other matters to be regarded in estimating the fair value of the property. The principles which are to be followed in giving weight to these various elements, some of which are mutually inconsistent, as in the case of original and present cost of construction, have never been clearly defined. At all events there is the utmost diversity of opinion in regard to them. Yet differences in judgment in attaching weight to these various factors may produce very wide differences in the final result reached. Of course this gives great latitude in appealing to the courts, in the event of dissatisfaction with the result reached by the regulating body in any particular case.

Aside from this uncertainty as to principles and the probability of litigation, the fair value rule is as a practical matter exceedingly difficult to apply in regulation. It requires a continual reappraisal of constantly shifting factors, many of which require elaborate investigation to determine. The cost of reproduction constantly shifts as changes occur in the value of money, and also as improvements are made in methods of construction. The present value of land measured by adjoining land likewise shifts, and requires continual field investigation. Depreciation is a variable quantity continually changing. There are in addition a myriad of theories with respect to what is termed "going concern value" and like so-called intangible values. To apply the fair value rule, all of this shifting information must be kept up to date and on tap for use at any given time.

Beginning with about 1897 prices and unit costs rose steadily, culminating in a violent rise during the World War. Thereafter they declined sharply, but again became steady at a level considerably above the pre-war period. It was thought that a new plateau of prices had been reached which would be relatively constant, but the present depression has exploded that theory and prices have been and still are falling about as violently as they rose during the war. During the period when reproduction costs were far above original costs the public service companies were naturally insistent upon giving those costs paramount and indeed controlling weight in ascertaining value for rate-making purposes. In the case of many utilities reproduction costs are now materially below original costs, and the time is rapidly approaching when that will be true of the railroads. So the shoe is now on the other foot and theories are beginning to change.

Not only is the fair value rule very difficult and expensive to apply, but it is also very unstable, and this instability may be detrimental to the investors in a public service company or to the users of its service or both. The question arises, therefore, whether the end which the Supreme Court has sought to achieve through this rule can not be attained in some simpler and better way, and that leads to the question as to what this end really is. Upon consideration it appears at once that fair value for rate-making purposes is only one factor in the judicial interpretation of the constitutional prohibition against confiscation. The other, which is just as important, is fair return. It is not from either of these factors alone that the end is reached, but from the two combined, and the result is a certain level of earnings. It is that level which the court is seeking to protect against undue regulation. Now what is that level? A most significant

expression of the court is found in *Bluefield Co., v. Pub. Serv. Comm.*, (262 U. S. 679) it has been cited with approval in several recent cases and is as follows:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

I call your attention to the final sentence. We believe that this correctly describes the real and essential end which the court has in mind, namely, that a public service company shall have earnings sufficient to assure confidence in its financial soundness and adequate, under proper management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. We further believe that if this end is attained, it is inconceivable that confiscation could also exist.

The rate base formula is directed squarely to the achievement of this end, but it follows a simpler and much more practicable path than the fair value formula. Briefly the idea is to use as the rate base an amount which approximates, liberally and generously, the reasonable cost of the existing properties minus only such depreciation as the carrier has a reserve to offset, and which can be kept up to date very readily by purely accounting methods. For the purposes of the railroads it is arrived at, speaking broadly, by taking the cost of reproduction new of road and equipment at the so-called 1914 unit prices, as found in our basic valuation, adding the then present value of land, bringing the total up to date by adding the net increase in carrier property since valuation date as shown by the accounts when correctly kept, deducting the amount of the carrier's depreciation reserve, and adding a reasonable sum for working capital. The result would probably exceed the reasonable original cost of the property, minus the depreciation reserve, but would not be far from that figure. Such a base is not only easily ascertained and kept up to date, but it is stable and dependable, and has the added advantage that much of the railroad investment is represented by bonds and preferred stock, the return on which is fixed and does not fluctuate with changing economic conditions.

As a matter of fact this base is probably now more favorable to many companies than would be a value arrived at by taking present reproduction costs and land values and deducting the full amount of depreciation. If it is not more favorable now, the indications are strong that the time is not far distant when it will be more favorable. If one desired to make things uncomfortable for the railroads, the plain course to pursue for some time to some would be to argue for a value of their property giving the same controlling weight to current reproduction costs as they have consistently urged since the passage of the valuation act in 1913. In the past I did not

think that was fair to the public, and for the future I do not think that it would be fair to the railroads.

Having ascertained this relatively stable rate base we arrive at the end sought by the court through our definition of a fair return, which is designed to achieve the very result set forth by the court in the *Bluefield* case from which I have quoted. That is the sum and substance of the rate base formula, and there is nothing radical or revolutionary or unfair about it. It could, indeed, be criticized as being too favorable to the railroads under present conditions. We believe that if this plan were made clear to the Supreme Court, and particularly the coincidence between the end which it seeks to achieve and the end which the court has plainly had in mind, it would not be found to be violative of the Constitution. And we believe that this would even more certainly be the result if it came to the court as the direct expression of the well-considered thought of the legislative branch of the Government. In saying this, I should add that I speak for the majority of the commission. There are some who do not approve the rate base plan, as was made clear in our report of last year to the Senate committee, a report which is printed in full in Appendix G of our recent annual report. For a further and more elaborate exposition of the plan I refer to that appendix.

There are two more provisions which are included in both bills and about which I should say something before I close. Section 2 of both would repeal subdivision (b) of paragraph (6) of section 5 of the interstate commerce act. This is a provision which limits the capitalization of the consolidating company to the value of the consolidated properties, and requires the commission to proceed immediately, in the event of an application for consolidation, to ascertain such values under section 19a. In many instances the growing use of stock without par value renders subdivision (b), in its present form, practically inoperative. And where this difficulty does not arise, other difficulties, almost as great, exist, for the provision relates to the entire properties of the carriers in question, and most railroad companies own considerable noncarrier property, such as securities of other companies, land not used for carrier purposes, etc. Of course the values of securities are constantly shifting quantities. We believe that this subdivision is an effective obstacle to the consummation of actual consolidations, as contrasted with mere acquisitions of control, and that it can safely be eliminated. The provisions of section 20a with respect to the issuance of securities require findings which amply protect the public interest.

Section 3 of both bills changes the present paragraph (f) of section 19a, which is the valuation section, so that it will no longer require the basic valuations to be brought up to date "in like manner" from time to time. Instead it will require merely that the commission shall keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of the carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein, in order that it may have available at all times the information needed to enable it to revise and correct its previous inventories and classifications of the properties.



Experience has shown that field checks by engineers of the additions and betterments to railroad properties, combined with checks of the accounting therefor, are very desirable in the public interest. Furthermore, the commission now has in the Bureau of Valuation an effective working force which has a training and experience in matters affecting railroad property and its costs and depreciation, and an accumulation of data, which are probably unsurpassed. It has become, we believe, an exceedingly efficient body, and for that I think that much credit is due to Commissioner Lewis, the commissioner in administrative charge. To disband that body under present conditions would cause much hardship and distress. But apart from that consideration we believe that it would be most unwise. Even if the bill which we recommend is passed, it will of course leave the carriers with the right to seek such recourse against any action on our part as they may be able to obtain through invoking the constitutional protection against confiscation. This protection might be invoked by individual carriers. Until it is more certain than it now can be that such cases will not arise, the Government ought not to disarm itself by disbanding and dispersing the force whose training and experience and accumulated knowledge now afford it protection in such possible court proceedings. We shall also need some part of this force in the administration of the depreciation accounting provisions of the act.

The CHAIRMAN. We are very much obliged to you for your very clear and very informative statement.

I am sure now some of the members of the committee desire to ask some questions. If they do, they may proceed.

Mr. BURTNESS. Mr. Chairman, there is one question that I would like to ask. The question that I have in mind relates, Mr. Commissioner, to the explanation of the rate basis formula on page 35 of your statement. I think I understand it. My question relates only to deduction for depreciation. I note you suggest the reduction of the amount of the carrier's depreciation reserve. That is a reserve that they actually have on hand.

What I would like is an explanation of why that alone should be deducted rather than the actual full depreciation.

Commissioner EASTMAN. Of course, we were trying to arrive at a formula here and a rate base which could be arrived at without continual field investigations, and which could be brought up to date by accounting methods. If you should deduct the full estimated depreciation, as you suggest, that, of course, would require an examination of the property each year.

Now, so far as the future is concerned, that will be taken care of by the commission's now outstanding orders relating to accounting for depreciation, which will require full provision for depreciation, not only of equipment but of fixed property. So far as the past is concerned, there is some measure of equity in not deducting depreciation for which the companies have not made any provision by charging against operating expenses, as they might have done.

I think, myself, that if we have erred, we have erred on the side of being too liberal to the carriers, but that is the reason why we put that in that form.

Mr. BURTNESS. If it is too liberal to the carriers, the reason for that equitable basis would be on the theory that the carriers, hereto-

fore, have not been permitted to charge the public enough for the transportation as provided under the act. Is that right?

Commissioner EASTMAN. They have been permitted, Mr. Burtness, to make full charges for depreciation. They have not been required to do it and they have always claimed that it was not necessary, as a matter of fact.

Mr. BURTNESS. Of course, there may not be any such carriers in existence, but if there are transportation companies in existence, being railroad properties which are in fact depreciated considerably, but the management of which has utterly failed to provide any depreciation reserve, simply permitted their properties to depreciate, paid out all earnings for dividends, without setting up a reserve at all, then, it seems to me, that the public would be getting the worst of it under the provision proposed, for the purpose of rate making, and the commission would not be authorized to deduct actual depreciation but simply what they have put aside in depreciation reserve. In other words, without deducting what they ought to have set aside under prudent and proper business management.

Commissioner EASTMAN. Of course, in our valuation work that is just what we have contended for and what we have endeavored to do.

When it comes to this rate base formula, of course, we get back to the fact that we are only proposing to set up here a guide for earnings, and that is composed of two factors. One is the rate base, and the other the fair return. The fair return is to be adjusted so as to sustain the credit of the companies adequately in normal times, so far as possible under economical and efficient management. So that even if the rate base is a little larger than you might think it ought to be, when it comes to the net result you can compensate for the error. As a matter of fact, you can not regulate rates so as to produce a precise mathematical result anyway, or come anywhere near it.

Mr. BURTNESS. I appreciate that, of course, but I just wondered in my own mind whether that particular provision might not be criticized by some people, by some members of the public.

Commissioner EASTMAN. From the standpoint of valuation, I should criticize it myself. I should be very strongly in favor of reducing the valuation by the full amount of the depreciation in the property, whether or not it had been covered by depreciation reserves.

Mr. BURTNESS. That is all, Mr. Chairman.

Mr. HOCH. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Hoch.

Mr. HOCH. I have noted here a number of things as you went along, Mr. Commissioner.

The CHAIRMAN. I will say to the members of the committee, if they feel that they would be more prepared to go along to-morrow after they digest this very informative and very instructive statement, as presented by the commissioner, why, you could come back to-morrow, could you?

Commissioner EASTMAN. Yes, Mr. Chairman.

The CHAIRMAN. You may go ahead now, Mr. Hoch.

Mr. HOCH. I have several general questions.

The CHAIRMAN. We have 15 minutes.

Mr. HOCH. I may say, so that my attitude may be clear in connection with these questions, that I have never believed in the recapture

provisions of the law, especially as to their practical application, and as far as the repealing of them is concerned; as to the future is concerned, I do not find any perplexities in my own mind; but I have been, and am, quite perplexed as to making this repeal retroactive.

Now, under the group plan of rate making, the theory was, and it was so stated in the transportation act, it was impossible to fix a just and reasonable rate for all of the roads which would not either starve the weak roads, or permit the strong roads to earn an unreasonably high rate of return.

Now, facing that theory, there was enacted this group system of rate making and at present, some, at least some of the strong roads, have had a benefit as a result of that group system, which they would not have had if the group system had not been in effect. Is that not true?

Commissioner EASTMAN. I do not believe, Mr. Hoch, that if section 15a had not been in force the commission's regulation of rates would have been very different from what it has been. I realize that in the past, when there was no such rule, the railroads were critical of the commission on the ground that it had been too harsh in the regulation of rates, particularly in holding down increases in rates. On the other hand, so far as I am aware, the commission never followed the theory of holding the rates down to the needs of the strong lines of a group. It always took into consideration the average condition of the group and I think would have continued to do that, whether or not section 15a had been passed.

Mr. HOCH. Then the statement in the transportation act is hardly a statement that could be defended, so far as rate making is concerned. I refer to the statement in the act, that it is impossible to fix just and reasonable rates under a competitive system under which some roads will not earn an unusually high rate of return. That is set out in the act itself.

Now, if your statement is correct, then, that the transportation act itself states an inaccurate thing, as far as the practical situation is concerned—

Commissioner EASTMAN. No; I do not think that follows.

Mr. HOCH. Why not?

Commissioner EASTMAN. What I thought you asked me was whether or not, by reason of the passing of section 15a, the strong carriers were given a larger revenue than they otherwise would have received. I replied that I thought that the commission would have pursued much the same general course of regulation if section 15a had not been passed. That does not mean that you can regulate rates in a competitive group without producing uneven results. I think that is true, though I think those uneven results can be minimized in other ways.

Mr. HOCH. As I remember, the transportation act does not say anything about producing "uneven" results. I do not have it right before me.

Commissioner EASTMAN. It says:

Without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation.

Mr. HOCH. Obviously, if any carriers did receive or were receiving a return in excess of a fair return upon the valuation, they were getting more than they were entitled to, in the public interest. Is not that true?

Commissioner EASTMAN. That is true.

Mr. HOCH. Now, whether it happened under that, or whether the same thing would have happened if we had not enacted section 15a, the fact remains that, theoretically, some of these roads have been paid above a fair return and more than they were entitled to receive.

Commissioner EASTMAN. I said that that was right. I ought to qualify that answer. I do not think it follows that because a carrier earns more than the amount of estimated fair return in one year or two years, it necessarily is being treated with undue liberality. I think that you have got to consider that matter over a reasonable period of years, because of the inevitable fluctuations in business conditions and in railroad traffic.

Mr. HOCH. I recognize the force of that statement at once, as to any one individual year; but if there had been a pooling of years and the same principles applied as section 15a now attempts to apply, would not the injustice or impracticability of section 15a be largely done away with?

Commissioner EASTMAN. Well, I think if you took a long enough average and included in that period 1930 to 1932 you might wipe out recapture for all roads. I have not made any estimates as to that. I think it is possible that that would be the result and, as I pointed out, it is very singular the way in which recapture works. If our estimates are anywhere near correct, and they are based on our inventories and valuations of these properties, right here in the eastern group there is the Pennsylvania system and our estimates show no recapture from it, whereas in the case of the Detroit, Toledo & Ironton, and the Wheeling & Lake Erie, and the Nickel Plate, our estimates show a substantial amount from them. Now, the Pennsylvania is regarded as among the strong roads in that territory. It happens to be a road which has been very conservatively capitalized. When you get a road in the reverse condition, it has two effects. The return on valuation is greater than the return on capitalization, and furthermore there is a tendency to attenuate and stretch out those earnings in every possible way to cover capitalization.

Mr. HOCH. Right at that point, on capitalization. As I understand it, the commission, prior to 1920, had no power and did not supervise the issuance of securities. That is true, is it not?

Commissioner EASTMAN. That is true.

Mr. HOCH. Is there any provision of the law that permits the commission to go over the question of capitalization prior to 1920?

Commissioner EASTMAN. What do you mean by "go over?"

Mr. HOCH. I mean to say, is there any practical way, either in law, or does the commission have any suggestion for remedying the situation of overcapitalization that you speak of.

Commissioner EASTMAN. Why, in the course of time, it is likely, in a good many cases, to remedy itself by reason of the fact that roads in that condition are likely to get in financial trouble and fall into receivers' hands. When they fall into receivers' hand and are reorganized, why, the water is likely to be squeezed out. For example, you take the case of the Chicago & Alton, which was in receivers'

hands. You will recall that that was the road about which there was so much public criticism in connection with some of Mr. Harri-  
man's operations. The result of those operations was a swollen cap-  
italization for that road. When it went through receivership and  
was reorganized, in the process of reorganization, as I recall it, all  
of the stock was wiped out and that overcapitalization has been cured.

Now, the Seaboard Air Line is a road which has been overcapital-  
ized and has suffered on account of that. Possibly the same result  
will happen in connection with the reorganization of that property.

That is something which is continually going on.

Mr. HOCH. Congress, in enacting the transportation act of 1920,  
evidently thought that that was not a subject to be left simply to the  
course of nature for correcting overcapitalization. It placed it in  
the hands of the commission, placed there not only authority but the  
duty to supervise the issuance of securities.

Commissioner EASTMAN. Yes; and we have authority to super-  
vise the issuance of securities issued in connection with these reor-  
ganizations. I have not always agreed as to the way in which that  
authority is exercised and I think there is a tendency, in case of  
reorganizations, to retain too much of the past capitalization. But  
we have the authority to regulate that matter.

Mr. HOCH. Do you think that the proposed change from a value  
basis either to a rate basis, as is suggested in H. R. 7116, or to the  
provisions of H. R. 7117, which as I understand it from your state-  
ment does not contain any provision about a rate basis—would have  
a tendency to provide a return on capital rather than on value?

Commissioner EASTMAN. Well, I think that in order to provide  
good credit for the roads, and that is what both bills emphasize, that  
is determined by the return on the capitalization of the road, pri-  
marily. However, I think that it is true that our valuations have  
not shown such a degree of overcapitalization, so far as the great  
majority of the roads are concerned, that this would be dangerous to  
the public.

The wording, "efficient and economical management," is in both  
bills, and I think that, in construing those words we would be  
justified in holding that it was not intended that we should exercise  
our power to supply good credit to a road which did not deserve it  
because of its past financial management with respect to capitaliza-  
tion, but I believe that there are comparatively few of those roads,  
and in most cases, or in many cases at least, I doubt whether they  
could get good credit, whatever we did.

The CHAIRMAN. The hour that we have set for adjourning has  
arrived.

We will convene to-morrow morning at 10 o'clock.

(Thereupon, at 11.46 o'clock a. m., the committee adjourned until  
the following morning at 10 o'clock a. m.)

## RAILROAD LEGISLATION

WEDNESDAY, JANUARY 20, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.  
*Washington, D. C.*

(The committee met at 10 o'clock a. m., Sam Rayburn,  
chairman, presiding.)

The CHAIRMAN. The committee will come to order.

### STATEMENT OF HON. JOSEPH B. EASTMAN, COMMISSIONER, INTERSTATE COMMERCE COMMISSION—Resumed

The CHAIRMAN. I think there were some questions that the mem-  
bers of the committee wanted to ask you this morning, Mr. Commis-  
sioner, unless you desire to make some additional statement.

Commissioner EASTMAN. There are one or two matters that I  
would like to cover, supplementing my statement of yesterday.

I want the committee to have all of the facts here which may be of  
significance. In going over the lists of the amounts which we esti-  
mate may be due under the recapture provision, certain facts were  
developed which I thought ought to be brought to your attention.  
There are two groups of carriers which are principally affected by  
recapture. One group is the group of coal roads operating in Vir-  
ginia and West Virginia, including the Norfolk & Western, the  
Chesapeake & Ohio with its subsidiary, the Hocking Valley and the  
Virginian. Of our total estimate of about \$378,000,000, that group  
accounts for 26½ per cent of the total.

The second group, which accounts for a large part, is the group of  
railroads controlled by the United States Steel Corporation. I am  
not sure that I have got all of the smaller ones, but including those  
which I could identify, the amount due from those roads under our  
estimate amounts to about 15½ per cent of the total, making for the  
two groups a total of 42 per cent.

Now, so far as the roads controlled by the steel corporation are  
concerned, if there were any way in which those could be segregated  
from the rest and recapture confined to them, it would not offend me  
at all.

I think what our estimates show with respect to the roads con-  
trolled by the United States Steel Corporation, as well as roads con-  
trolled by other industries, tends to support the point which the  
commission has endeavored to make for a good many years and that  
is, that there is a tendency, due to the strong competition of the  
trunk lines, to give unduly generous divisions to industrial railroads,  
where the industry controls a large amount of traffic. The facts also



suggest that there may be something in the claim, which I believe the competitors of the United States Steel Corporation have made, that that company is quite willing that the rates should be fairly high on the ore which the lines which it controls carry, because its competitors have to pay on that ore very often and, of course, they suffer the disadvantage of the charges, if they are too high, whereas the steel corporation recoups through the returns on the railroads, since it controls those railroads absolutely.

Now, so far as the lines in the Virginia region are concerned, I am not so sure that it would be advisable, even if you could, to segregate those roads. Take the Chesapeake & Ohio. That probably at present ought not to be regarded simply as an individual property. It really constitutes the backbone and financial cornerstone of the so-called Van Sweringen system, and I imagine that its resources are being used to some extent for the support of the weaker roads in that system. Certainly I know that its credit has been used in the past, to a considerable extent, to build up that system.

Now, I do not think that is true of the Norfolk & Western, although the Pennsylvania does hold a majority, or nearly a majority, of the stock of that company.

But I think that it is not unlikely that those roads may be called upon to do something in the way of rates for the coal producers on their lines. I understand there is a very strong movement to secure reductions in the rates to tidewater on the ground that the coal industry is suffering from the competition of fuel oil, natural gas, electric power plants, and so on. Just what that situation is, with respect to those lines, I do not know in all of its details, but I think it is quite possible that they may find themselves unable to maintain present rates to the full extent.

Now, so much for that matter. There was another matter suggested by Congressman Hoch's questions that I have looked up overnight. He referred to the capitalization of the roads and what might be the effect if emphasis on credit in this proposed bill should lead to basing rates, in part at least, on capitalization.

Now, we have a figure which we call the net capitalization of all the railroads. That means the net figure which is arrived at after eliminating the duplications occasioned by their intercorporate holdings. In 1920, when we investigated rates all over the country, the net capitalization was \$16,993,930,263. That compared with a property investment account, including material and supplies, of \$20,616,586,456, and less depreciation reserve of \$19,535,243,967. The value which we used at that time was \$18,900,000,000. In other words, just about \$2,000,000,000 in excess of the net capitalization.

In 1930 the net capitalization was \$19,055,626,085. The property investment account, plus materials and supplies, at that time was \$26,488,375,297. The spread between the two had increased, due to the large increase of the surplus account in the intervening 10 years. The book investment, less depreciation, was \$24,127,608,557. Our estimate of reproduction cost at 1931 prices, at that time—this includes the present value of land also—was \$30,967,905,555, and less depreciation was \$25,359,264,331. Our estimate of original cost for the structural property alone, since we did not have estimates for land, was \$22,092,107,618, and less depreciation \$17,539,110,027. That does not include land, so that you will see that the net capitalization

was materially below the other figures. Those figures also indicate what I said yesterday, that there has been a tendency for reproduction costs to come down closer to original costs. There was still a considerable spread in 1931, but the trend of the two lines is definitely together, and in the case of roads which have expended a large amount, either in construction or in reconstruction, during the period following the war, the cost of reproduction, I believe, is now below the original cost. It depends upon the road and at what time its construction or reconstruction took place.

Now, with respect to the question of credit in its relation to capitalization: At the time of the recent advanced rate case, we had one of our men make a study of that subject. The facts were that the railroads had not, during the period following 1920, at any time earned, for the country as a whole,  $5\frac{3}{4}$  per cent upon either our estimate or the railroads' estimate of the value of their property. Nevertheless, in general, credit conditions had been good, certainly between 1922 and 1929, and that gave cause for reflection.

Our determination of  $5\frac{3}{4}$  per cent as a fair return was arrived at, I may say, in 1922. In fact, it was based on a record made, I think, in 1921, or using 1921 figures, and in the period immediately following the war the price of money was very high. Even railroads of excellent standing were paying as high as 7 per cent for their money, and  $5\frac{3}{4}$  per cent was arrived at under those conditions.

This man, whose figures I have not checked but he is a very reliable statistician, makes the following estimate: Supposing the railroads had earned  $5\frac{3}{4}$  per cent, on a certain rate base, what would that have produced on aggregate common stock, after covering fixed charges, dividends on preferred stock, and also allowing one-half of 1 per cent of the rate base for a surplus. Now, taking the figure which is the utmost which the railroads have ever sought as a base in a general rate case, although not the utmost they have claimed in recapture cases—namely their undepreciated book value, or property investment account—if they had earned  $5\frac{3}{4}$  per cent on that in the year ended December 31, 1929, it would have covered their fixed charges, including dividends on preferred stock, allowed one-half of 1 per cent to go to surplus, and would have left 14.89 per cent on common stock. A return of  $4\frac{3}{4}$  per cent on that base would have left 10.94 per cent on common stock.

Now if you take the so-called O'Fallon method of valuation, which consists roughly in taking our basic valuations and bringing them up to date by the net additions and betterments at cost since that time; using that as the base,  $5\frac{3}{4}$  per cent would have produced 10.42 per cent on common stock and  $4\frac{3}{4}$  per cent would have produced 7.25 per cent. So that you will see that the basis of capitalization as compared with valuation is, after all, not an unfavorable basis from the standpoint of the public.

I wanted to bring those facts out. And, there is another question that you asked, Congressman Hoch, which was with respect to how overcapitalization can be remedied. Yesterday, the only way I suggested was through reorganizations. That is not an entirely correct answer, because it is quite possible for railroads to improve their capitalization by the accumulation of surplus and the foregoing of dividends. An illustration of that which I have in mind is the New Haven Railroad. The New Haven Railroad got into

trouble with respect to its capitalization through improvident investments in securities of trolley lines, steamship lines, and so on. It suspended dividends and allowed its surplus to go back into the property. I think that that continued over a period of 15 years or more and at the end of that time the situation of its capitalization had very greatly improved.

The commission can also exert some influence in that direction, in its supervision over the issue of securities, by not allowing the issuance of securities, particularly bonds, in case of an overcapitalized company, if there is any other way in which its needs for capital funds can be met.

The CHAIRMAN. Mr. Hoch, were you through with your questions, yesterday?

Mr. HOCH. Mr. Chairman, I had a number of questions, but I do not wish to monopolize the time of anyone else who desires to ask any questions. I have a number of questions, but no doubt there are Members who have questions too.

Mr. HUDDLESTON. Mr. Commissioner, I notice this in your statement of yesterday:

There is something incongruous in a system of regulation which finds it necessary to permit carriers to earn more than they ought to earn and meets the difference by taking the money away after it is received.

That implies that the recapture clause had influenced the Commission to fix a rate of return higher than it otherwise would have been. Is that correct?

Commissioner EASTMAN. Well, I think that the recapture clause, or rather all the provisions of section 15a, implied a system of regulation which would enable certain fortunately located companies to earn more than what was regarded as a fair return. That is true. But, as I said yesterday, I think that a similar situation would have resulted under regulation, if there had been no section 15a, and did result in the past before that section was enacted.

Now, the question is how to cure that, if it needs curing. What seems to me incongruous is, to cure that by allowing a company to receive some money and then taking it away. Is there not some other method of adjusting these inequalities between companies? I think it could be done by a gradual spread of consolidations under proper regulation. That often helps in eliminating inequalities between strong and weak companies. I think it could be done through the readjustment of divisions, to a certain extent, and in the case of these steel roads I think it might be done to a considerable extent by regulation of their local rates. Possibly that might be true of the coal lines in Virginia. I also suggested that it might be done, when rate increases are made, by pooling the rate increases and applying them to the needs of the railroads which really justify the increase.

Mr. HUDDLESTON. Just what effect would you say that the recapture clause has had, in fixing rates under section 15a?

Commissioner EASTMAN. Well, that is hard to say.

Mr. HUDDLESTON. Has anything been taken from the rate payers that would have been taken, had there been no recapture clause?

Commissioner EASTMAN. That is hard to say, because it involves speculation as to what the commission would have done if section 15a had not been on the books.

Mr. HUDDLESTON. I am trying to find out, if the carriers were permitted to earn more than they ought to have earned.

Commissioner EASTMAN. Well, answering your question further, I think it is quite possible that section 15a may have had an effect upon the commission's mind as an indication that Congress looked favorably upon a regulation of rates which would produce the results indicated in that section. There may have been some psychological effect of that sort. If there had been no section 15a at all, I have always felt that the commission would have proceeded along similar lines; that it would have had to consider the needs of the roads for the country as a whole or by groups. It could not take individual railroads and consider their needs alone.

Mr. HUDDLESTON. You advocated, yesterday, the return to the carriers that had paid it, of the money which had been collected, and my questions are addressed to the situation that if the money represented an excess of charges taken from the shippers, what justice is there in allowing the carriers now to hold it?

Commissioner EASTMAN. Well, I think, in the first place, you have got to do one of two things: You have either got to apply the recapture provisions in the case of all roads during the past period, or you have got to return the money which has been paid in by a few. That is to say, I do not see how you can segregate out certain roads and say you will keep what they earned over and above a certain amount but you will not attempt to collect from any others who may have been in a similar situation.

I do not think that it follows, however, that because those roads had something to recapture, or may have had something to recapture, the shippers were charged too much. That point was discussed by the Supreme Court in the Dayton-Goose Creek case, and it held that a shipper could not complain if he was obliged to pay more than he would have paid if his individual situation on an individual road had been the only thing taken into consideration, provided that was necessary to support the transportation system, as a whole. I think that is, in substance, the court's reasoning in that case.

Mr. HUDDLESTON. These bills, 7116 and 7117, reserve the right to recapture any excess earnings prior to December 31, 1931.

Commissioner EASTMAN. They do.

Mr. HUDDLESTON. They do not propose to refund anything to the roads that have paid it.

The CHAIRMAN. Allow me to say this: The recommendations of the commission, however, did do that, and I asked Mr. Eastman, as the chairman of the Legislative Committee, to draw a bill, with the suggestion, covering the suggestion of the Interstate Commerce Commission, with the understanding that I would introduce it to serve as a basis for hearings.

When the bills came to me they had the disposition of this recapture clause, and also the disposition of the money collected, and claimed to be due to this fund.

I eliminated that part of the repeal of it ab initio, when I introduced the bill, knowing from my conversation with Mr. Eastman that that would come up in the hearings on both sides of the case.



The bill, however, sent up by Mr. Eastman, did have in there a clause about which he speaks now, the repeal of the recapture, ab initio, and return of this money.

Mr. HUDDLESTON. Passing to the statement that the strength of the road had something to do with the excess earnings I am somewhat puzzled to understand why the capitalization cuts any figure in that. In other words, the excess earning is based on fair value and not on outstanding securities.

Commissioner EASTMAN. Quite correct.

Mr. HUDDLESTON. So that if a road improvidently had a larger capitalization in securities than it ought to have, it would not cut any figure in whether they would have excess earnings or not.

Commissioner EASTMAN. No, sir; that is precisely the point. So far as recapture is concerned, that depends upon the determination of the value of the property; but when it comes to the financial strength of the company, that is influenced very largely by its capitalization. Now, you take, as an illustration, the Chicago, Burlington & Quincy. I think that that has always been regarded as, financially, one of the very strongest railroads in the western district; but our estimates show nothing to recapture on that road. That is because its valuation is very high in comparison with its capitalization.

Mr. HUDDLESTON. Just what figure does capitalization cut in so far as recapture is concerned?

Commissioner EASTMAN. It does not cut any figure in it at all. Recapture is determined by the valuation, but the financial strength of a company is determined by its capitalization. Here is a road which has always been regarded as one of the financially strong roads in the West, but we find that nothing is to be recaptured from it. On the other hand, here is the Frisco, which has not been regarded as so strong, and we find a very large amount estimated to be recaptured from the Frisco, but nothing from the Rock Island, which is associated with the Frisco. The Rock Island has a low capitalization as compared with valuation, and the Frisco has a high capitalization in relation to value.

The point I was trying to make is that recapture does not depend on financial strength. It only depends upon the valuation, and it may result in our attempting to recapture something from a road which is actually financially weak, when we recapture nothing from a road which is actually strong.

Mr. HUDDLESTON. The fact then that the Seaboard has a larger excess earnings than the Pennsylvania means that they earned more on their fair value?

Commissioner EASTMAN. On our estimate of the fair value.

Mr. HUDDLESTON. We would expect a road which was well financed to have a larger earning on valuation than a road that was poorly financed, but in that case it seems to have worked out the other way.

Commissioner EASTMAN. A road that is well financed, conservatively financed, does not need to have as large an earning in order to be financially sound, and attract capital into the industry. It can pay excellent dividends without getting up to 6 per cent upon its capitalization.

Now, that was a fact, if I may interject this; that was a fact which was recognized in the early days of regulation in Massachusetts. At

that time, before they ever heard anything of the fair-value doctrine, they attempted there to keep down the capitalization, and they went further than that. They encouraged the gas and electric companies to accumulate a surplus, and they said that surplus was to be used in part for the benefit of the public and in part for the benefit of the security holders. It would benefit the security holders by adding to the protection of their investment. It would benefit the public, because no return was to be paid on it per se. And that system worked very well, indeed. There never was the slightest trouble about getting private capital to invest in those properties, as long as they were handled on that basis, yet when the fair-value rule came into being, it was discovered that some of them earned less than 4 per cent on what was alleged to be their fair value.

Mr. HUDDLESTON. There is nothing then, about the fact that the Seaboard, and one or two others you mentioned as being weak roads, and the Pennsylvania, and the Louisville & Nashville, as being strong roads, that has any particular bearing on excess earnings.

Commissioner EASTMAN. Not on the amount to be collected. It does have a bearing, as I said, on the fact that the law takes from, or attempts to take from, roads in certain cases which are financially weak, whereas it does not take from roads which are financially strong.

Mr. HUDDLESTON. But it takes in the one case as it does on the other where earnings are in excess of a fair return on value.

Commissioner EASTMAN. Correct.

Mr. HUDDLESTON. Mr. Commissioner, may I ask what is a "just and reasonable rate"?

Commissioner EASTMAN. That is a difficult question. I do not know that it has even been defined in simple terms. I do not know that it can be defined in simple terms. I think that, in determining just and reasonable rates, you have got to take into consideration a great many factors. It is a good deal like the Supreme Court's valuation rule. You take into consideration a good many factors and you arrive at a judgment of what is right. You may take the cost of service into consideration; you may take the value of the service, the fact that the commodities have high value; you may take into consideration the custom with respect to that traffic, how it had moved in the past, and under what rates it has moved freely; you may take into consideration what is charged with respect to other analogous commodities; and from the evidence before you, which may not be complete evidence, and of course, often is not in our cases, you arrive at what is just very like a jury would.

That is about the sum and substance of it.

Mr. HUDDLESTON. I wonder what effect upon a provision requiring a just and reasonable rate a clause relating to "fair return" might have? Does not a just and reasonable rate imply a fair return? In short, does a just and reasonable rate mean what you said it must mean as defined in the *Smyth v. Ames* case?

Commissioner EASTMAN. I think it does under normal traffic conditions. I do not think it necessarily does under conditions of abnormally low traffic. That is to say, supposing that you find a fair rate for the movement of wheat under normal conditions, I do not think that when traffic falls off all over the country, because of an

economic depression, it thereupon necessarily becomes just and reasonable to add materially to the charge for transporting wheat.

Mr. HUDDLESTON. Would that be justified with a provision for fair return, such as is included in these bills?

Commissioner EASTMAN. Would it what?

Mr. HUDDLESTON. Would the addition of such a rate, be justified under the provisions of these bills relating to fair return? In other words, would the provisions here for requiring a "fair return" warrant the fixing of a rate which would not be just and reasonable?

Commissioner EASTMAN. No, sir; not in my opinion. It is preceded by the words, just as the present section, "in the exercise of its power to fix just and reasonable rates," and furthermore it is very clearly stated that—

The fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or reducing rates, as the case may be; but it is hereby declared the duty of the commission, in the exercise of its sound discretion, to maintain as far as possible a general level of rates which, over a reasonable period of years, will produce revenues consistent with the standard above set forth.

You can get my point, perhaps, by following it to an absurd conclusion. Supposing a road is transporting one particular commodity, and the traffic on that falls practically to a minimum; it is 10 per cent where it was 100 per cent before. Certainly it would not be just and reasonable to increase the rates on that traffic so that it could earn the same amount on 10 per cent that it did on 100 per cent.

Mr. HUDDLESTON. This bill, 7117, would seem to contemplate that.

Commissioner EASTMAN. If it does, it is entirely contrary to my interpretation, and certainly is not the construction that I should place on the bill.

Mr. HUDDLESTON. I have in my mind that raw materials of all kinds are very greatly depressed in price. The percentage that the cost of transportation represents now is possible twice what it was three years ago on many of these products.

Your idea is that a rate which was just and reasonable, without being anything more, would require a reduction now instead of indicating an increase so as to enable a carrier to earn a "fair return?"

Commissioner EASTMAN. I do not think it would necessarily require a reduction, although it might require a reduction in order to make traffic move.

Mr. HUDDLESTON. That is just the point I have in my mind, is that limitation "all the traffic will bear?"

Commissioner EASTMAN. Well, that is a thing, certainly, to be taken into consideration. Now, in the recent advanced rate case, the commission found that there was practically an entire absence of proof that the rates proposed would produce an actual increase in revenue to the carriers, and a great deal of proof the other way. However, I think that ordinarily, and unless there is strong proof to the contrary, the effect upon the movement of traffic is a matter which ought to be left to the judgment of the management of the property. So long as these railroads are in the private hands, you can not take away the exercise of all judgment from the management. In other words, you would have Government management if you did.

There are certain matters which are properly questions of judgment which must be left to the determination of the management.

Mr. HUDDLESTON. Any rate, no matter how low, discourages traffic, and at any rate, no matter how high, will find some traffic, so that it is always a question of degree, as I see it.

Commissioner EASTMAN. Take the question of passenger fares, right now, that illustrates the situation.

Mr. HUDDLESTON. Yes.

Commissioner EASTMAN. In 1920, we allowed the standard passenger fare to go up to 3.6 cents per mile. Now, we have not changed that since and, although the passenger business is falling far short of a fair return, is much less profitable in fact than the freight business, no one, not even the railroads, is claiming that it would pay to increase that 3.6 cents per mile. On the contrary there are many, even among the railroads, who think that it might probably be well to reduce it. Now, that is a question of judgment. I think that can only be determined by experiment.

Mr. HUDDLESTON. The difficulty is that the rail carriers have driven away their passenger traffic by this high rate. The people have become accustomed to using other means of passenger transportation. Other lines have been built up.

Here is a merchant who puts a price, on his goods. It is higher than his neighbor. He runs his patrons away. After he has driven them away, he has no more business, to cut his price might not bring them back, that is a matter of education and so an experiment, unless it were a prolonged experiment, would have slight value.

Commissioner EASTMAN. Those are very difficult questions of judgment. I went through all of that before I came on this commission, in connection with the street railway fares, as to whether or not it was advisable to increase street railroad fares, and whether or not it would drive traffic away by getting above 5 cents. When it comes to placing questions like that, which are merely questions of judgment and experimentation, in the discretion of the regulatory body, I think you are going pretty far.

Mr. HUDDLESTON. The bill, 7117, I notice that in section 2, it provides that—

In the exercise of its power to prescribe just and reasonable rates, the Commission shall give due consideration, among other things (1) to the present and reasonable prospective transportation needs of the country.

and consideration shall be given among other things to several things stated here, including transportation needs of the country, the credit requirements of the carriers, and that the carriers be enabled to furnish adequate service.

I am quite anxious to know just what effect those clauses have on what the carrier would otherwise be permitted to charge.

A "just and reasonable rate," as I understand, preserves all of the carriers' rights under the Constitution. Am I correct in that?

Commissioner EASTMAN. Well, I think you are, but the judgment which a regulatory body might arrive at on that matter, might be different from the judgment reached by the Supreme Court with respect to it.

Mr. HUDDLESTON. As to the future, but not the present?

Commissioner EASTMAN. I mean to say, the conclusion might be reached that a certain rate was just and reasonable, and when it got to the court, and the question arose as to whether or not the company was being allowed a fair return upon the fair value of its property, the court might decide that the commission had gone too far.

Mr. HUDDLESTON. These three clauses are intended to qualify "just and reasonable rates," and seem to warrant the fixing of a higher rate than would be fixed merely under a "just and reasonable" provision?

Commissioner EASTMAN. Well, I can say this, so far as I am concerned, that if the law was in precisely the state in which it was prior to 1920, when there was no section 15a, merely the requirement to prescribe just and reasonable rates, in determining the general level of rates throughout the country I should feel that it was necessary to consider all of those matters which are enumerated there, whether or not they were specified in the law.

Mr. HUDDLESTON. Your view would be that in other words, the law means the same without those clauses as with them.

Commissioner EASTMAN. It would, from my point of view, but I think that if Congress feels as I do about it, it is desirable to put them in the law. It is always desirable for Congress to be as explicit as it can reasonably be in determining the policy to be followed by its agents.

Mr. HUDDLESTON. There are so many factors in fixing a rate, the impossibility of ascribing any particular weight to any factor seems to me to make it undesirable to name certain specified factors and say that they shall be taken into consideration.

If I were going to put something in there I should say that the price of the commodity carried was entirely as worthy of consideration as the condition of the carrier.

Commissioner EASTMAN. Well, I think, as I said yesterday, that if you are going to have our railroads run by private industry, it is essential from the standpoint of the public, which is being served by the railroads and which has transportation needs in the way of service which have to be met, to keep the carriers in good credit, and in a position where they can attract the capital which is constantly needed in the industry, at least under normal conditions. I do not think that you can do it under conditions such as exist at present.

Mr. HUDDLESTON. Do these bills, 7116 and 7117, affect the group system of rate making in any way?

Commissioner EASTMAN. I would not think that they did.

Mr. HUDDLESTON. Rates will continue to be made for groups upon an average level of return and so forth, as heretofore.

Commissioner EASTMAN. Yes, sir. Under the present law, the Commission can consider the situation of the railroads from the standpoint of the average for the country as a whole or can do it by groups. Now, if nothing is said about that in these bills, I think that would still be open to the commission.

Mr. HUDDLESTON. That was the practice prior to the Transportation act of 1920 also?

Commissioner EASTMAN. I was not, of course, a member of the commission in those days; but as a matter of fact the commission did consider those early advanced rate cases by groups. For ex-

ample, I recall that in one case, when, I think, a 5 per cent increase was sought, or perhaps it was a 15 per cent, it was granted in eastern territory but was not granted in western territory, or in the south.

Mr. HUDDLESTON. Under the old law, it is my recollection that an application for a rate might be made by a single carrier. Is that correct?

Commissioner EASTMAN. Well, any carrier could file proposed increases in rates, subject to the power of the Commission to suspend them for investigation.

Mr. HUDDLESTON. Yes. Suppose that a carrier under the old law had applied for a certain rate, and had shown by the facts that the rate was compensatory and was just and reasonable. What authority, under the old law, would the commission have had to say whether it would be compensatory to other carriers, not as well situated as the initiating carrier?

Commissioner EASTMAN. Well, when it comes to the consideration of individual rates, of course, those must often be taken up for consideration apart from this question of the general level of rates. In the ordinary rate case that comes before us, involving just a few rates, perhaps a single rate, we have rate comparisons to consider, and various other matters are put in evidence, but very little attention is paid by any of the parties of record to the general rate level.

The need for that, I think, is recognized in the provision which is in the present section 15a, and is also in the proposed section 15a, where it is provided that the commission may modify or adjust a particular rate which it may find unjust or unreasonable, and prescribe different rates in different sections of the country. That sort of rate regulation of individual rates is going on all of the time.

Now, these questions as to the general level of rates usually come up in connection with cases of more general application. They are of a somewhat different nature. Cases where the issue is whether there should be a horizontal increase in all rates, or whether there should be increases throughout the country, or throughout certain territory, in rates on particular commodities, or groups of commodities. In other words, cases where revenue considerations are made paramount, as they are not made paramount in most of these individual rate cases.

Mr. HUDDLESTON. It is my recollection that under the old law the commission had no power to initiate a rate.

Commissioner EASTMAN. Well, under the original law, it did not. The commission, in one sense of the word, has no power to initiate a rate now. In other words it can not go right out and issue an order and say such and such a rate must be put in force. It can open up an investigation of its own motion and, having heard the evidence, issue an order, just as it could in a complaint case. The initiation comes in opening up the investigation.

Mr. HUDDLESTON. It did not have that power under the old law, did it?

Commissioner EASTMAN. Of course, so far as power under the old law was concerned, there were many fields which were not covered there. I can not at this moment recollect, but I am inclined to think that from the very beginning the commission, so far as its power went, had authority to institute investigations on its own motion. Is that correct, Colonel Thom?



Colonel THOM. I think so, but the power to act on it was a different question.

Mr. SHALLENBERGER. You are talking about prior to 1920.

Colonel THOM. Yes, sir.

Commissioner EASTMAN. The original act of 1887, of course, was very largely changed in 1906, and again in 1910, prior to the changes which were made in 1920. I think under the act of 1887—and certainly after 1906, or, at least, 1910—the commission had power to initiate investigations on its own motion. However, I am not so sure as to the original law.

The CHAIRMAN. What date did you say, Mr. Commissioner, 1906? Commissioner EASTMAN. 1906, or at any rate 1910.

Mr. SHALLENBERGER. I would like to know if the commission at that time fixed rates on its judgment, after investigation.

Commissioner EASTMAN. It could after—

Mr. SHALLENBERGER. Could it both raise or lower rates?

Commissioner EASTMAN. It could after 1910. Again, I am a little doubtful as to whether that was 1906 or 1910. Under the old, original law, it was thought that such power had been granted, but the Supreme Court found that all that the commission could do was to find whether a rate which was complained of was unreasonable. That enabled the commission to award reparation covering the past, but did not enable it to fix a precise rate for the future.

Mr. HUDDLESTON. You think, after 1910, that rate-making power was conceded to the commission?

Commissioner EASTMAN. Certainly after 1910, and it may have been after 1906.

The CHAIRMAN. But it was clarified by the provisions in the act of 1920?

Commissioner EASTMAN. Well, not so far as the power to prescribe a maximum rate for the future was concerned. I think that was cleared up before that time. The 1920 act did grant power to fix a minimum rate.

The CHAIRMAN. Following up one of Mr. Huddleston's questions with reference to the matter of group rate-making, do you think it would be a mistake to abandon them?

Commissioner EASTMAN. Why, I think that the commission has certainly got to recognize differences of condition which prevail in different parts of the country. I do not think it would be practicable to have a uniform rate level for the country as a whole, because conditions differ.

Mr. HUDDLESTON. Referring to page 37 of your statement, with reference to section 5 of the act, it is said that these bills would both "repeal subdivision (b) of paragraph (6) of section 5 of the interstate commerce act. This is a provision which limits the capitalization of the consolidated company to the value of the consolidated property, and requires the commission to proceed immediately in the event of an application for consolidation, to ascertain such values under section 19a."

And then, you say, "in many instances the growing use of stock without par value renders subdivision (b), in its present form, practically inoperative." Then, you refer to other difficulties.

Would that change in the law allow these consolidated companies to issue unlimited stock?

Commissioner EASTMAN. No, sir; because those securities would have to be issued subject to the provisions of section 20a, and before we can approve an issuance under that section, we must find that such issue, or assumption—

(a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

Now, those are findings which have to be made for the protection of the public interest, which would have to be made under section 20a. Those would continue after this paragraph was eliminated.

Mr. HUDDLESTON. To eliminate this paragraph the commission would still retain control over the issuance of the securities.

Commissioner EASTMAN. Absolutely.

Mr. HUDDLESTON. Does the commission now have the practice of approving the issuance of nonpar value stock?

Commissioner EASTMAN. It does. Personally I have dissented in every case, I believe.

Mr. HUDDLESTON. How can the commission limit the issuance of nonpar value stock? It might be a cent a share or it might be a million dollars a share.

Commissioner EASTMAN. You can limit the number of shares and you can control the amount at which those shall be set up as a liability on the books.

Mr. HUDDLESTON. On what basis could they be limited, leaving aside the question of setting up on the books, if it has no par value.

Mr. HUDDLESTON. In other words, as an illustration, suppose a consolidated carrier had \$100,000,000 of valuation. What limitation would the commission be able to put on nonpar value stock?

Commissioner EASTMAN. Well, it might, for one reason or another, think it desirable to limit the number of shares. For example, there might be preferred stock outstanding with a par value of \$100 a share, and each share having a voting right. Now, it might be proposed to give one vote to each share of nonpar value stock and by greatly increasing the number you could enable the nonpar value stockholders to outvote the preferred stockholders, although the latter had a much greater actual equity in the property. In order to prevent such a situation from arising, the commission might think it desirable to limit the number of shares of nonpar value stock.

Mr. HUDDLESTON. It is a practice, as I understand, to provide in some cases that the preferred stock has no voting rights.

Commissioner EASTMAN. Well, I think the commission has, in general, disapproved that practice.

Mr. HUDDLESTON. Have they authority to disapprove under the law as it now stands?

Commissioner EASTMAN. They have so interpreted their authority. Mr. HUDDLESTON. I take it that from what you said, you personally would be sympathetic with a provision which would require some specified par value on stock.

Commissioner EASTMAN. Yes; I would.

Mr. HUDDLESTON. And, possibly, also some regulation as to the voting power of stock?

Commissioner EASTMAN. Well, I think we have that authority now. Certainly, the commission is exercising it. I do not think it has been questioned, although it may have been.

Mr. HUDDLESTON. Of course, there may be several classes of common stock, some with voting rights, some without; some pooled, and some in trust, and all kinds of juggling going on, and I was wondering if the commission had power to regulate it.

Commissioner EASTMAN. Well, it feels that it has very comprehensive power.

Mr. HUDDLESTON. Has that issue been tested out in the courts?

Commissioner EASTMAN. Just what issue; under section 20a?

Mr. HUDDLESTON. Referring to the control of the issuance of securities, which I have mentioned.

Commissioner EASTMAN. Well, so far as I can now recall, no questions under section 20a have gone to the courts. I want to warn you about these questions as to nonpar value stock. They are not easy questions. I imagine that we might easily get an argument started here that might last all day on that subject of nonpar stock.

Mr. HUDDLESTON. There is a school of thought upon the subject that a share of stock in a railroad should represent something definite, and that a man should not need a guide book when he goes to buy or sell it; that there should be a fixed par value, with definitely prescribed rights belonging to every share of stock in a transportation corporation. I am wondering whether the committee should not give some recognition to dealing with that subject.

Commissioner EASTMAN. Well, as I say, it is a subject upon which a great many people have different ideas. I personally feel that there ought to be a definite relation between stock and the money invested in the property, that it is desirable to have the securities represent the fact that so much actual money has gone into the property, that the use of non par value stock is apt to be misleading, particularly because of the mental habit of people in thinking in terms of \$100 par value of stock, and that one of the effects of non par value stock is to make people believe that they are getting something for nothing. In other words, getting something that they really are not getting.

Mr. HUDDLESTON. As an illustration, I had before me the other day a stock certificate that had a lot of fine print in it. I took occasion to read it. I found that it set out some very peculiar and complex rights that the stockholder had, or rather that he did not have, and I imagine that the average stockholder took that stock, feeling that he had such rights as a common stockholder ordinarily has.

Now, it seems to me, the subject is very worthy of some consideration.

Commissioner EASTMAN. Well, one of the reasons, as I recall it, why the commission refused to approve the original merger proposition in the case of the Van Sweringen properties, where the Chesapeake & Ohio, the Nickel Plate, the Erie, and the Pere Marquette were involved, was a question with respect to the voting rights given to the stock and the manner in which control was lodged in a very small investment.

Mr. HUDDLESTON. Do you remember the set up in a definite way in that manner?

Commissioner EASTMAN. No, I do not. I could give you a reference to that case, so that you can look that matter up.

Mr. MAPES. Mr. Commissioner, this morning you mentioned the fact that the capitalization of railroads as a whole was less than the estimated valuation of them by the commission, and stated that if the roads earned this  $5\frac{3}{4}$  per cent on the estimated valuation, they would be able to pay all of their fixed charges and set aside one and a fraction per cent for some purpose which I did not quite understand.

Commissioner EASTMAN. Surplus.

Mr. MAPES. Surplus?

Commissioner EASTMAN. Yes.

Mr. MAPES. Is that provided for in the law?

Commissioner EASTMAN. No; that is just this statistician's basis for estimating. He thought that it was desirable, or would be desirable, for a company to set aside something for surplus, not paying it all out in dividends, and that he ought to make some allowance for that in his computation.

Mr. MAPES. And then, you said, the common stock would earn something over 14 per cent.

Just what did you include in capitalization?

Commissioner EASTMAN. This statistician deducted in the first place, the fixed charges. That included taxes, and interest on bonds; interest on all debts, all such fixed charges were deducted, and then he deducted any dividends payable on preferred stock. Then he deducted this one-half of 1 per cent for surplus. Finally, he estimated what the amount remaining would produce, on the average, on the common stock outstanding. Of course, that is an average for all of the railroads. It would produce more in some cases and less in others.

Mr. MAPES. Well, when you say the capitalization is less than the estimated value of the roads, what do you include in capitalization?

Commissioner EASTMAN. Well, I think that all of the evidences of indebtedness are included, and all of the stock outstanding.

Mr. MAPES. Preferred and common?

Commissioner EASTMAN. Preferred and common.

Mr. MAPES. Bond issues?

Commissioner EASTMAN. All of the bond issues; and I think, all of the notes. I can make sure of that. That is a figure which is recorded in our statistical reports, net capitalization. You can not take the gross capitalization, because there are so many of the railroads that have investments in the stocks of other companies, and this is a net amount arrived at by deducting those intercorporate holdings.

Mr. MAPES. There is one statement that you made yesterday that I would be glad if you would amplify just a little. You said that one way to take care of the weak lines would be to make an appropriate pooling of the increases in rates. Just how do you mean to do that?

Commissioner EASTMAN. Well, that is what the commission proposed to do in this recent 15 per cent advanced rate case, in the original report. The form of pooling which was proposed in that report was to take the total increase and then apply it to the fixed charge needs of the companies, to make sure that those were all met, and

then divide the remainder pro rata among the roads. But, it could take other forms. You could, if there was not that emergency existing with respect to the fixed charges, make a distribution of the increase in proportion to some estimate of the financial needs of various roads.

Mr. MAPES. Mr. Nelson suggests this question—what do you mean by pro rata?

Commissioner EASTMAN. Well, of course, pro rata is in proportion to whatever you care to use as a measure.

Mr. MAPES. What the necessities of the roads are?

Commissioner EASTMAN. Yes; one that I am suggesting is the financial condition of each particular road. You could work out certain indices of financial condition and divide the increase in proportion to those. I think that was worked out, although I am not sure, by former Commissioner Potter, who advocated such a plan at the time when the western railroads were proposing a 5 per cent increase.

Mr. MAPES. Why do you apply it just to the increase in rates? Why not apply it to the total income from rates?

Commissioner EASTMAN. Well, I do not know how you could do that latter; but I do believe that when an increase in rates is necessary and the evidence shows that it is made necessary by the situation of certain roads, and not the situation of others, you are justified under the law in seeing that that increase is divided, to some extent at least, in proportion to those needs which justify it.

Mr. MAPES. Would not that require you to make two rate structures, one, the normal, and the other increased to take care of the weak roads?

Commissioner EASTMAN. Well, you could have a surcharge, like the Pullman surcharge, which was accounted for separately and divided separately. It does involve some additional accounting.

Mr. MAPES. That is all I care to ask, Mr. Chairman.

The CHAIRMAN. Mr. Lea.

Mr. LEA. Has the commission exercised the power of fixing the minimum sale price of nonpar value stock?

Commissioner EASTMAN. Minimum sale value?

Mr. LEA. Yes. I understand you approve the issuance of non par value stock. Now, does the commission make a practice of putting a limit on the minimum price, at which it may be sold?

Commissioner EASTMAN. In the case of new stock offered to the stockholders, I think that it does. That is my recollection.

Mr. LEA. But in what instances would they not fix any price for the sale of stock?

Commissioner EASTMAN. Well, I am just wondering whether that would be necessary in cases of reorganization, for example, where an exchange is being made, and certain classes of security holders are being given so many shares of non par value stock. In other words, where it is not being issued for cash.

Mr. LEA. Would not the elements in the financing of a road be very much the same, whether it were new stock or reorganization stock?

Commissioner EASTMAN. I should think they would.

Mr. LEA. The question I had in mind is, how can the commission control these securities from the standpoint of the public, if they are issued without control of the sale price?

Commissioner EASTMAN. Well, I think that is regulated in the orders. I will look that up, Mr. Lea, and make sure, but that is my recollection, when non par value stock is being issued for cash, that the amount which must be paid for each share is fixed.

Mr. LEA. Yes. I will be very glad to know about that.

Do you take it that this bill contemplates any general change in the plans of rate prices, or is it directed more at the administration of the rate standard?

Commissioner EASTMAN. I think it is directed at the latter.

Mr. LEA. It is for the purpose of getting a more effective and understandable standard for the regulation of rates, is it?

Commissioner EASTMAN. I should say that was so.

Mr. LEA. What elements of valuation for rate making purposes which are embodied in the present law do we discard by the standard proposed here in H. R. 7117?

Commissioner EASTMAN. Well, 7117, or 7116?

Mr. LEA. 7116 or 7117, either one.

Commissioner EASTMAN. Yes; well, they do not set up any standard of value.

Mr. LEA. That is 7116, but 7117 does?

Mr. HOCH. I think it is the opposite.

Commissioner EASTMAN. 7116 does not set up a standard which must be inflexibly followed, but does set up a standard to serve as a guide.

Mr. LEA. Well, this bill, if passed, would discard some elements of value that are now in the present transportation act, would it not?

Commissioner EASTMAN. You mean in the determination of the rate base?

Mr. LEA. Yes.

Commissioner EASTMAN. Yes.

Mr. LEA. And, what are those elements that would be discarded?

Commissioner EASTMAN. Well, it would discard reproduction costs, after the basic valuation, which is based on reproduction costs at 1914 prices; it would discard the present value of land; that is, any increase in the value of land, or decrease, following the basic valuation; all additions and betterments, whether land or structural properties, after the basic valuation would be taken in at cost; it would discard depreciation, except in so far as it reflected in the depreciation reserve; it would discard intangible values, if there are any such things—what the experts call going concern value, for example.

Colonel THOM. Mr. Chairman, may I ask a question? Are the questions asked and answers given in relation to 7116?

The CHAIRMAN. Both bills are under consideration.

Commissioner EASTMAN. I understood that it referred to 7116 and the rate basis provided in that bill?

Mr. LEA. Yes. At the present time the appreciated value of property is included in the valuation for rate making purposes, as I understand it.

Commissioner EASTMAN. Well, under the practice of the commission, in determining fair value for rate-making purposes, there are considered the cost of reproduction new at current prices; the cost of reproduction less depreciation; the original cost as far as it can be determined, including both structures and lands; the present



value of the lands, based on adjoining property; the amount of working capital reasonably necessary; and then all of the evidence received, which the carriers may wish to offer, with respect to these so-called intangible values. From that result, from those factors, the commission arrives at a judgment with respect to what is the value for rate-making purposes.

Mr. LEA. Suppose under the present act a railroad company acquires a piece of land that was worth \$500,000, say, when it was acquired and at the present time that land is worth \$2,000,000. Now, I understand, of course, that its present value would be estimated at \$2,000,000 for rate-making purposes.

Commissioner EASTMAN. It would, under the fair-value rule.

Mr. LEA. Yes.

Commissioner EASTMAN. I should add this qualification, that I have always had doubt as to whether that was the actual value of the land; that is, an amount arrived at based on the value of the adjoining property. It does not mean that the carrier could sell the land for that amount, if it had to, if, for instance, it abandoned the use of the land for transportation purposes, as has been proven in a great many cases where roads have been abandoned, because of the fact that the value of the adjoining property is dependent upon the fact that the road is in operation. Of course, adjoining sites are very valuable because they are near the railroads.

Mr. LEA. But, for rate-making purposes, that \$2,000,000 estimated value would be included in the valuation, would it not?

Commissioner EASTMAN. It would.

Mr. LEA. Now, the railroad would have, of course, an increase in its income or value of its property by \$1,500,000 on account of appreciation of land. Now, that \$1,500,000 would be included in computing what a fair rate should be, or a fair return?

Commissioner EASTMAN. If the fair value rule were used?

Mr. LEA. Yes. Would that \$1,500,000 be taken into consideration in figuring the income of the company?

Commissioner EASTMAN. Well, it would certainly be taken into consideration in determining a limit beyond which regulations could not go in reducing rates without producing confiscation.

Mr. LEA. What I am attempting to ask is whether or not that income to the company serves to reduce rates on the one hand and would it serve to increase rates on the other because of the increased value?

Commissioner EASTMAN. Yes.

Mr. LEA. On the other hand, it represents income to the railroad company and does to that extent tend to reduce—

Commissioner EASTMAN. It is not taken into consideration as income. Milo R. Maltbie, now chairman of the New York commission, I think attempted to work that out and to have appreciation in land values accounted for as a credit to income, just as depreciation is accounted for and deducted from income, but I do not think he succeeded in establishing that system.

Mr. LEA. It would, however, help the company in establishing the value of its property.

Commissioner EASTMAN. Yes, but it does not mean any cash unless there is an actual sale.

Mr. LEA. Does the present standard of rate making require the consideration of elements that the Constitution does not require?

Commissioner EASTMAN. No.

Mr. LEA. Well, do you consider that in the present act a fair return on the aggregate value does not contemplate any greater value than the real value of the properties?

Commissioner EASTMAN. Well, do you mean by "real value" the value for rate-making purposes?

Mr. LEA. Well, the value as I take it under the constitutional rule is the real value, or perhaps the market value under the rule about condemnation.

Commissioner EASTMAN. The value under the Supreme Court's interpretation of value for rate making purposes is not, as I understand it, the commercial value of the property. That may be quite different.

Mr. LEA. Well, that was a distinction I was trying to draw, the constitutional rule, the just compensation rule, and the rule of rate making in the present transportation act. They are radically different, are they not; that is, the valuation for railroad rate making purposes, and the valuation for condemnation purposes as set out in the Constitution.

Commissioner EASTMAN. Well, there is not anything set out in the Constitution, except that the property shall not be taken away without due process of law.

Mr. LEA. And just compensation.

Commissioner EASTMAN. Or just compensation.

Mr. LEA. Yes.

Commissioner EASTMAN. That applies, I think, under article 5, in relation to an act of Congress, not in respect to what the States may do; but I think the fair value rule is derived from the due process clause, as I recall it. It is really the Supreme Court's interpretation of that due process language.

I may say, Mr. Lea, that if you want to obtain an exposition of my own peculiar views on valuation which I highly value myself. [Laughter.]

Mr. LEA. That is a good recommendation.

Commissioner EASTMAN. You will find it in *Excess Income of Richmond, F. & P. R. Co.* (170 I. C. C. 451). I have condensed my views in that opinion and also taken up—

Mr. CROSSER. What is that citation, Mr. Commissioner?

Commissioner EASTMAN. 170 I. C. C. 451, and my dissenting opinion begins on page 521. I have an extra copy here, one extra copy, that I shall be glad to give to you, Mr. Lea.

Mr. LEA. Thank you, I will be glad to have it.

Now, I take it that it is the fundamental purpose, and one in which practically everybody agrees, that the railroads should have a just valuation and a just and reasonable return on their property and that their railroad investment should be reasonably secured so far as that is possible. But personally I would desire to have as little court regulation of rates as possible and to give our regulatory bodies a free hand as long as they preserved the fundamental rights of the corporations, and with that in mind, I wonder if the insertion of these three clauses found on page 2 of H. R. 7117 does not tend rather to interfere with the regulatory body than tend to

simplify its work. In other words, if we give the railroads just and reasonable rates, the question of investment will take care of itself in financing and we do not need to pass up to the courts the question of whether we are going to establish or maintain a national system of railroads or whether the railroads are going to have credit, or what the prospective commerce is going to be. Might not the assertion of these standards tend to complicate and lead to court interference of rate making rather than simplify the process?

Commissioner EASTMAN. Well, my offhand answer to that would be that if the carriers should go into court and say that the commission had violated the law, violated the duty imposed upon it by Congress, because it had not taken these matters into consideration, the court would hold that that really is a question of fact, and the tendency of the Supreme Court—in fact its announced doctrine—is that it will not interfere with the findings of the commission on facts unless it is shown that there is no evidence, no substantial evidence to support those findings I should suppose that the carriers would not get very far by attempting to mandamus the commission, or some such process at that, to compel obedience to the general language used in that section.

Now, I am just giving you a rather offhand opinion on what is a difficult question; but my best judgment now is that no difficulty would arise as to that.

Mr. LEA. Well, it does serve the purpose to direct particular attention to these standards.

Commissioner EASTMAN. It does.

Mr. LEA. It does that.

Commissioner EASTMAN. I think it will be admitted that only a few of all the things which should be considered are specified there. But when it comes to the general level of rates, I think that the ground is pretty well covered there.

Mr. LEA. Of course, when we go into the question of what is necessary to maintain a national system of railroads, we almost pass into the field of speculation and conjecture, and the first impression on my mind was that we might thereby unnecessarily give the courts reason for interfering with the regulatory body.

Commissioner EASTMAN. Well, at the present time, I see no basis for that fear.

Mr. LEA. On this question of recapture. About how much is in the recapture fund at the present time.

Commissioner EASTMAN. I think I stated that yesterday in my statement.

Mr. LEA. Well, if it is in that statement, very well.

Commissioner EASTMAN. It is, up to the date of December 17, 1931.

Mr. LEA. And, what is the status of the fund as it stands at the present time? To what extent is it obligated so that there might be delay or difficulty about its return?

Commissioner EASTMAN. It is invested in securities of the United States. It is in the hands of the Treasury Department and invested only in Government securities.

Mr. LEA. So, there is no particular aid given the railroads in the present investment of that fund, I take it.

Commissioner EASTMAN. No. The aid which it was aimed to give to the railroads through that fund was by way of loans or the leasing of equipment purchased through the fund, and the greater part of, by far the greater part of it, has been paid under protest, and we have a ruling, I think, from the Attorney General that it can not be used until the protests have been determined by our final orders with respect to the amounts due.

Mr. LEA. Would your recommendation, or rather the recommendation of the commission, that the fund be repaid include a recommendation that the repayment should carry interest?

Commissioner EASTMAN. My recommendation in the bill which was sent up to Chairman Rayburn was that the fund be liquidated. That would mean the sale of those securities, which might bring less than par at the present time. I do not know just what the market values are. I think it is quite conceivable that they might on the present market bring less than par. And the recommendation was to liquidate the entire fund and then distribute it pro rata among the carriers that had paid in, giving due consideration to the time when the payments were made. In other words, those that have had payments in there for five years would be given credit for that length of time in the accumulation of interest, and that would entitle them to relatively more than the carrier that had money in there only a year. That can be worked out mathematically.

Mr. LEA. But, the only interest payment would be taken out of the fund?

Commissioner EASTMAN. Yes; giving them whatever that fund produced when it was liquidated.

Mr. LEA. Yes.

Colonel THOM. But nothing more.

Mr. LEA. Did that recommendation include any return to the Government for administration expenses?

Commissioner EASTMAN. No.

Mr. LEA. I presume the commission has considered whether or not the recapture provision might not be improved rather than abandon the plan?

Commissioner EASTMAN. Yes; it has, and in a letter which we sent to the Senate committee, I think, some two or perhaps three years ago, we did make definite recommendations with respect to the improvement of the plan. Now, we came slowly to the conclusion that it ought to be abandoned altogether, but the first suggestions we made were with respect to its improvement.

As I recall it, we recommended that a period of three years should be used for the purpose of computation instead of one year, and we also recommended that the requirement for security be relaxed so that no more security would be required than was required under section 210 in the loaning of the \$300,000,000 fund right after the period of Federal control. We also provided for relaxing of the interest rate.

I would be glad, if you are interested in that, to send you the suggestions we made with respect to that matter.

Mr. LEA. I would be glad to have them. Thank you.



Has the present situation as to financing the railroads tended to emphasize the value of a fund such as would have accumulated had the recapture payments been made?

Commissioner EASTMAN. It has, as I think I indicated in my statement yesterday. When we first made our recommendations that recapture be eliminated, I think we stated that even if the fund had been accumulated, it would not have been put to any use under the present provisions of the law. That was because of the very strict provision with respect to the security which must be required and to the interest rate of 6 per cent. Up to say 1930, any carrier which could comply with the security provisions of section 15a could get money at better than 6 per cent, but that is not true under present conditions, and I think that if the fund had been recaptured and were available for use now, it would be very useful.

Mr. LEA. What could be done with these recapture funds, in case they are not returned to the railroads?

Commissioner EASTMAN. Under the law?

Mr. LEA. Well, as a matter of policy. Suppose that we are willing to change the law, if we find a better way of doing it, do you have any suggestion as to what could be done with the funds.

Perhaps it would be better to ask you first to tell us what could be done under the law.

Commissioner EASTMAN. Well, under the law as it now stands, all that can be done is to lend the money to the carriers for the purpose of making improvements or for the purpose of meeting maturities of debts which have been incurred for the purpose of improvements, and secondly, we can purchase equipment or other facilities with it and lease those to the carriers. Now, in both cases, we must be able to find that there is reasonable assurance that the carrier will be able to meet all of its obligations under the loan and we also must prescribe and obtain adequate security for the loan, and the interest rate is 6 per cent in case of a loan, and the rental on equipment is 6 per cent in case of a lease.

Now, that is what we can do under the present law.

I think that we did not change that in our recommendations, except that we proposed to relax the provisions with respect to the security which would be required, and also the provisions with respect to interest payments.

Now, you could do almost anything that you want to with the fund.

Mr. LEA. Could those funds be covered into the Treasury under the present law, under the Constitution?

Commissioner EASTMAN. Covered into the Treasury?

Mr. LEA. And made Government funds.

Commissioner EASTMAN. I presume they could. By the way, we secured an opinion from the Attorney General as to whether those funds were public funds which must be covered into the Treasury under the present law, and he held that they were funds that we could deposit in our own name in a bank and they did not need to be handled by the Treasury. Then the Comptroller General rendered a different opinion on that subject, as he sometimes does, and we compromised by letting the Treasury handle the funds, although they are not regarded as covered into the Treasury.

The CHAIRMAN. Mr. Commissioner, I think that some of the members of the committee have not had an opportunity to interrogate you, and we would like to have you come back to-morrow morning for a little while.

Mr. SHALLENBERGER. Could I just ask if the commissioner would put into the record of the hearings all those figures that he gave us on the appraisal of the railroad properties for different years; the capitalizations that you read this morning?

Mr. EASTMAN. Well, they will all go into the record, the figures I gave this morning.

Mr. SHALLENBERGER. They are not available now?

Mr. EASTMAN. No; I do not have them for distribution.

The CHAIRMAN. I want to ask Mr. Fulbright if he is ready to go ahead?

Mr. FULBRIGHT. Yes, the shippers will be ready to proceed.

The CHAIRMAN. We will then adjourn until 10 o'clock to-morrow morning.

(Thereupon, at 11.47 o'clock a. m., an adjournment was taken until 10 o'clock a. m. the following morning. Thursday, January 21, 1931.)

## RAILROAD LEGISLATION

THURSDAY, JANUARY 21, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

(The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

### STATEMENT OF HON. JOSEPH B. EASTMAN, COMMISSIONER, INTERSTATE COMMERCE COMMISSION—Resumed

The CHAIRMAN. Mr. Shallenberger, were there any questions you desired to ask?

Commissioner EASTMAN. Mr. Chairman, before you begin, there are one or two matters that came up yesterday that I would like to clear up.

The CHAIRMAN. Yes.

Commissioner EASTMAN. A question was asked by Congressman Lea in regard to our regulation of nonpar value stock. I find that in all but a very few cases no par stock has been issued in connection with reorganizations or readjustments of securities. Where it has been issued for cash, the price has been fixed by the commission. There are very few of those cases. In the other cases the amount at which it shall be set up on the books as a liability has usually been left to our accounting department, but in some recent cases it has been specified in the order authorizing the issue.

Congressman Huddleston asked about our regulation of voting power: In Nickel Plate Unification (105 I. C. C., 425, p. 444), the commission said:

"We believe it to be self-evident that the public interest requires that the entire body of stockholders of a railroad which is bonded in excess of one-half of its investment, and not a powerful few, shall be responsible for its management. This can be done only by giving them the power to control the management. The lethargy of ordinary stockholders in exercising their power to control the management of these large corporations has often been commented on, but nevertheless the power should be in their hands to use as they see fit. It is inimical to the public interest to strip stockholders of their voting power, thus rendering it so much easier to control a great transportation system by a comparatively limited amount of investment."

Now, I think I said yesterday, in reply to a question by Congressman Huddleston, that our power to regulate the issue of securities under section 20a had not been the occasion for any action in court. I overlooked in that connection the Milwaukee reorganization case. That is *U. S. v. Chicago, etc., R. Co.* (282 U. S., 311).

In connection with the Milwaukee reorganization, the commission sought to attach a condition to the issuance of the securities that a fund of \$4 per share, which had been levied on the old stockholders in the form of an assessment, should be impounded and that the expenditure of that fund should be subject either to the regulation of the court or of the commission, and so far as a fund of \$1.50 per share out of that \$4 was concerned, which was to be used to compensate the reorganization managers and the security holders' committees, and so on, the court held that that condition was beyond our power, and refused to approve it; but they did not invalidate the whole issue on that account, simply held that particular condition to be invalid.

Now, Congressman Lea asked with respect to the uses to which the recapture fund might be put, and I said that we had covered that matter in a letter to the Senate committee. That letter was on May 17, 1930.

One of the things we proposed was that the recapture period should be three years instead of one year, and we had this to say:

As the law now stands the general railroad contingent fund is likely to be of very little use. The late Senator Cummins incorporated a plan to provide for the direct distribution of the recaptured funds among the weaker carriers in a bill, S. 1870, which he introduced in the Sixty-ninth Congress. A vital objection to such a plan, as we see it, is that it would require the commission to make a continual quasi-audit of the accounts of all of the carriers, a very laborious, expensive, and time-consuming undertaking. This would be necessary in order to provide for an equitable distribution in proportion to earnings, and to make sure what those earnings were and whether they were affected by obvious waste or inefficiency in management. Moreover, the distribution would be among so many carriers that the actual relief afforded probably would not be of great consequence.

Now, we did make certain recommendations with respect to the use of the recapture fund, and those were as follows:

In the case of loans made to carriers from the general railroad contingent fund, our alternative eliminates the provision in the present law requiring adequate security, and it authorizes the Commission to provide for interest payments varying with the amount of the carrier's net railway operating income, which in no case shall be at a higher rate than 6 per cent and under certain income conditions may be at a lower rate. Such a provision might be of great help to weak and struggling carriers. We would still be required to find that there is reasonable prospect that the carrier will be able to pay the interest and repay the loan, and authorized to fix terms and conditions, including security. This was all that was required by section 210, under which loans were made to the carriers following the end of Federal control.

The present law authorizes the commission to use the general railroad contingent fund to purchase the "equipment or facilities," and to lease such property to carriers at a rental of 6 per cent per annum. Our alternative would authorize the commission to provide for a rental varying with the net railway operating income of the carriers, as in the case of the interest payments on loans.

While the same uses for the general railroad contingent fund are specified as in the present law, with the modifications above indicated, our alternative contains a further general provision that the half of the excess income which the carrier holds as trustee for, and pays to, the United States shall be thus held and paid "for such uses and purposes as are herein specified or may hereafter be declared by law." This provision will remove any doubt as to the power of Congress to provide new uses for the fund, if that should hereafter be desirable.

Now, there was one other suggestion with respect to a change in the use of the recapture fund which was made in the so-called Howell bill, S. 4005, Seventy-first Congress, second session.

That bill provided that recapturable income should be held by the carrier as trustee for the United States and expended with the approval of the commission in providing designated extensions of line or lines or other additions to or betterments of the carrier's or system's railroad property. The investment so made was to be represented by certificates to be held by the commission and upon which 4 per cent was to be paid, but these certificates gave the commission no voice in the management of the property. The company, however, was prohibited from including the property represented by the certificates in its rate base, except to the extent necessary to cover the payment of the 4 per cent interest. It was, in short, a plan under which the prosperous roads were given the use at 4 per cent of the funds recaptured from them, for the purpose of making additions and betterments to their own property.

It seemed to me objectionable because too favorable to the prosperous roads and because it did nothing to help the weak roads. Instead of favoring the plan, however, the prosperous roads saw a ghost and opposed it on the ground that it was a step toward public ownership. This always seemed to me a singularly stupid performance. Bear in mind that for the period of 10 years since 1920, our estimate of the amount due under recapture is only \$378,000,000 and that—

Mr. CROSSER. Will you give me that period again, Mr. Commissioner?

Commissioner EASTMAN. From 1920 to 1930, for the 10 years since 1920. Bear in mind that the total investment in railroad property is more than \$22,000,000,000; that is a conservative figure. Bear in mind, also, that if the recapture provisions were continued the amount due each year, even in normal times, is likely to decrease with increasing consolidations and other changes. You can figure out from this how long it would take under the Howell bill before the Government would have anything more than a small fractional interest in railroad property, and that interest would in any event carry absolutely no voice in railroad management.

That comment is not strictly germane to this issue, but I have been wanting to get it out of my system for some time. [Laughter.]

Now, there is one thing more that I want to mention. Congressman Lea asked whether or not the provisions of section 2 would not make it easier for the carriers to bring commission regulation into the courts.

Mr. HUDDLESTON. Pardon me; would you mind being interrupted at that point?

Commissioner EASTMAN. No, sir.

Mr. HUDDLESTON. The new Reconstruction Finance Corporation bill provides for loans to railroads and loans which may be made on railroad securities, and the means thereby, so that the corporation could become the owner of railroad stocks and could vote them. They could become indefinite owners.

Commissioner EASTMAN. How would that be brought about?

Mr. HUDDLESTON. Through a foreclosure of collaterals.

Commissioner EASTMAN. Oh, Yes.

Mr. HUDDLESTON. Which the corporation is directly authorized to administer. That word is used, "administer."

I did not hear of any objections upon the part of the railroads to that bill, although it seems very much more of a Government ownership bill than the one you refer to.

Under it, the Government could, theoretically, become the owner of all of the railroads.

Commissioner EASTMAN. Well, I think that would take a very long time to accomplish, because it would only be done through failure to repay the loans, and the acquisition of stock in connection with such failure to repay the loans.

Mr. HUDDLESTON. I said "theoretically."

Commissioner EASTMAN. Yes.

To some extent that is true under section 210 of the transportation act, and the loans we made under that. There may be cases there where, before the Government gets through, it will be the owner of certain stocks in reorganized railroad properties.

Mr. LEA. Mr. Commissioner, on this recapture situation, apparently we have reached the place where there are two alternatives—either to pay back what we have, or else collect what is due.

Commissioner EASTMAN. Yes.

Mr. LEA. And, as I understand you, you think this situation has demonstrated important reasons in favor of accumulating a reserve fund to aid roads in emergencies.

Commissioner EASTMAN. The present situation?

Mr. LEA. Yes.

Commissioner EASTMAN. Yes; I think that is true.

Mr. LEA. And while we are considering this question of recapture and repeal of the recapture clause and refunding of the money, is it not important to consider what alternative, if any, should be provided for establishing such a reserve fund?

Commissioner EASTMAN. I think it is.

✓ One suggestion that I think I made yesterday, and which the commission made in its annual report this year, was that in times of prosperity the railroads should have the opportunity to accumulate a surplus which would be available in times of distress, and also that consideration should be given to maintaining that surplus in part in liquid form, so that it could be used without the necessity of issuing securities to replenish the treasuries. In other words, if you are not going to regulate rates up and down so as to maintain a uniform level of earnings regardless of economic conditions, you have got, in order to have a fair average, to compensate for the deficiencies in times of economic distress, by permitting surpluses in time of economic prosperity, and in order to make these surpluses really useful in times of distress, present conditions have seemed to prove that they have got to be in part in liquid form.

✓ Mr. LEA. Would further legislation be necessary to use the pooling system that has lately been advocated by the commission?

Commissioner EASTMAN. The pooling system which we advocated would be available under the present law only in case of an increase of rates authorized by the commission, at which time a condition could be attached requiring the carriers to accept pooling before they accepted the increase.

You will understand there is a good deal of difference of opinion as to the legality of that. I have expressed my opinion and other opinions to the contrary have been expressed, but at all events that is

the only way in which it can be accomplished now, that I know of. In other words, if there is an increase in rates, to attach such a condition to the increase. So, in order to have pooling we have got, in the first place, to have an increase in rates, and in the second place, the carriers must accept the increase subject to a condition requiring it to be pooled.

It has been suggested, and I think I am correct in saying that former Commissioner Potter has expressed the opinion, that the commission could be authorized to require pooling apart from the acceptance of such a condition by the carriers, and I am not sure that he does not go so far as to say that it can be required without such acceptance under the law as it now stands.

Mr. LEA. Apparently it would be more satisfactory to have legislation to authorize it, if that plan is to become permanent. Would that be your judgment?

Commissioner EASTMAN. It would, although I say frankly that it would give rise to a great many legal questions which would be sharply controverted. My anticipation is that under normal conditions such legislation would not be effective until it had been passed upon by the courts, owing to the opposition to it.

Mr. LEA. What is your judgment as to the expense of administering the pooling system, as compared with this fund developed under the recapture clause?

Commissioner EASTMAN. Well, the expense in some respects would be very greatly decreased, because there would be no necessity for ascertaining any values of properties. That feature would not be in the plan at all, and of course that is one of the great items of expense in the recapture plan at the present time. And also it offers one of the greatest opportunities for prolonging both the expense and time by litigation.

The expense involved would depend a good deal upon the kind of pooling arrangement required. I can see that it might take such a form that a good deal of accounting would be required and perhaps a good deal of inspection of the accounting by the commission. It is a little difficult to think that out. The question has only recently come up. So far the commission has only proposed to use the pooling plan in what it regarded as an emergency situation and to use it for the purpose of protecting the fixed charges of the weaker lines, leaving the accounting, in that connection, very much in the hands of the carriers themselves. It is a complicated matter. It is difficult to say just what complications might arise in connection with a broader application of the pooling plan, and, as I have said before, its application seems to me contingent upon an increase in rates.

Mr. LEA. What is your judgment about the practicability of attempting to collect these unpaid recapture funds? Especially in the next few years, or at present?

Commissioner EASTMAN. Well, as the law now stands, there is a very great deal of work still to be done by the commission; a great deal of accounting work; a great deal of valuation work; an immense amount of work has been done and the commission has a large number of cases well forward to the point of decision, but after they are decided by no means is it certain that the work will stop there. The fact probably is that it will not, but that the cases will go into court. The R. F. & P. case seems headed for the courts.



There has been no compliance with our order. And I think I said in my original statement that it can not be said with any certainty that when you get into court, the commission may not have to prove the valuation, the facts with respect to valuation, all over again before the court, or possibly before a jury. I think that will be claimed by the companies. They will contend that that must be done.

Now, I want to say just a word about the provisions of section 2, as to whether those provisions would make it easier for the carriers to carry our regulation into the courts. I have gone over that section again. I refer to section 2 of H. R. 7117. I can not see that its provisions would make it easier to appeal to the courts. However, I am not a member of the bar, and perhaps a trained lawyer would see more possibilities in the bill than I do in that respect. I suggest that that question be directed to Mr. Fulbright, and Mr. Benton, and Mr. Thom, who are trained lawyers and who, I understand, are to follow me on this bill.

My understanding is that our regulation can be taken into court on two grounds only. One is that we have acted contrary to the Constitution, and, of course, the bill will not change that right in any respect; the other is, that we have acted in violation or disregard of our statutory duties and authority. It seems to me that the provisions of section 2 are so safeguarded and limited that it would be very difficult for a court to find that we have acted in violation or disregard of them.

Colonel THOM. What provision is that?

Commissioner EASTMAN. H. R. 7117, section 2. For instance, the provision is that the Commission shall give "due consideration, among other things" to the specified matters, and the words "so far as practicable," and "so far as possible" appear in the bill, and the clause is included that "the fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or decreasing rates."

It seems to me that it would be difficult for the carriers to go into court on the ground that we had acted in disregard or violation of those provisions. The main thing that section 2 would do, in my opinion, would be to declare a legislative policy and make clear that Congress has in mind, and wishes the commission to have in mind, the fact that it is necessary, in the public interest, that the railroads shall be maintained in a financial condition that will enable them to furnish adequate and satisfactory railroad service. In other words, if you are going to entrust this public service to private agencies, they have got to be paid adequately for the job, so that they can perform it satisfactorily.

Mr. LEA. Assuming that is a correct interpretation of that section 2, would not that be covered by the terms "just and reasonable rates?"

Commissioner EASTMAN. Well, I think that I said yesterday that if those provisions were not in the bill, and we were passing on the general level of railroad rates, I should feel it necessary in the public interest to take the same things into consideration as are specified in the bill, but I do think that it is important to declare that as a

legislative policy, that Congress should make it clear to the commission what it wants them to have in mind.

Mr. NELSON. On that point, Mr. Commissioner, if those three things have heretofore been elements that have been considered in determining what was a reasonable rate, you have added nothing to the law, have you?

Commissioner EASTMAN. No; but you have emphasized them, I think.

Mr. NELSON. Now, if these three new elements which you think must be considered in arriving at a just and reasonable rate are new, and the court should find that they are not proper elements to be considered, then you have voided the whole thing, have you not?

Commissioner EASTMAN. Well, that is a legal question I do not believe I can answer. My offhand opinion is that you have not voided the whole thing.

Mr. NELSON. Unless these three elements are sustained by the courts, or will be sustained if they are included, what you are doing is you are putting in three new elements that must be considered in arriving at a reasonable adjustment.

Now, as I see that, they are new, and as you advise, they may have to be considered by the courts. I do not know whether they have been considered. If they have been, and their legality has been passed on, that is all right; if they have not, then you have got a question which may be raised there.

Commissioner EASTMAN. Well, I would not fear that the court would find those provisions in any way violative of the Constitution, and that is the only way I know of in which the court could declare them invalid.

Mr. NELSON. No; but there are several questions to be considered as to whether they are proper elements which should be considered with others in arriving at a just and reasonable rate. I do not know that there would be a violation; but any way, it would raise the question, and you are bringing in three new elements.

Commissioner EASTMAN. I speak with due deference again, because, as I said, I am not a member of the bar, but my understanding is that the courts can not declare an act of Congress invalid unless it violates the Constitution in some respect. I can not see how the courts could find that those provisions are violative of the Constitution.

Mr. LEA. Of course, my questions are not whether they are violative of the Constitution. I had no apprehension about that, but the question in my mind was whether or not we would be giving new statutory grounds for the railroads to apply to the courts.

The CHAIRMAN. I agreed to recognize Mr. Shallenberger.

Mr. SHALLENBERGER. I have one or two questions.

Mr. CHAIRMAN. All right.

Mr. SHALLENBERGER. If I understood you the other day, in making your statement, you referred to the fact that the commission, in its judgment, had fixed the rate of 3.6 cents a mile for passenger traffic, and that there is now a difference of opinion as to whether the railroads would have a greater income with higher rates for passenger traffic or with lower rates. That is, there is some question as to whether an increase in fares would result in an increase in return,

and that you thought that that was not a question for the regulatory body to decide, did you not?

Commissioner EASTMAN. I do not think that there is any question in anybody's mind about raising the fares. I do not think that any one thinks that the carriers would profit by increasing the passenger fare; but there are differences of opinion among railroad men themselves as to whether or not it would be more profitable to maintain the present 3.6 cents as the standard fare or to reduce it. Now, so long as the railroads are not earning anywhere near a fair return on the passenger business, I doubt whether the commission would have authority to require a reduction below 3.6 cents, unless conceivably it had evidence which amounted to proof that it would be profitable to reduce it.

Mr. SHALLENBERGER. The same rule would apply to freight rates as well as passenger fares?

Commissioner EASTMAN. Yes.

Mr. SHALLENBERGER. These bills, I think that it is fair to presume, have been introduced for the benefit of or to improve the condition of the railroads, or in the hope of helping conditions to some extent.

Commissioner EASTMAN. And we think it would improve the system of regulation, too.

Mr. SHALLENBERGER. In the judgment of your commission and as the result of the study you have given the problem, I am wondering if you think, as others think, that one of the reasons that the railroads are in difficulty is that they have not met with efficiency the conditions which have confronted them. In other words is it existing competitive conditions or rates that is at the bottom of the railroads' troubles?

Commissioner EASTMAN. Well, at the bottom of the railroads' troubles now is the lack of traffic, the fact that traffic has fallen off because business has decreased to such an extent. Added to that is competition from other forms of transportation, but I do not think that that is as big an element in the situation by any means as the lack of traffic, due to the lack of prosperity and good business throughout the country. My opinion is that if traffic were normal, the present rates would probably be approximately near adequate. It might be necessary to increase rates in certain respects and I have on doubt that there are rates that ought to be increased.

Mr. SHALLENBERGER. Do you think that if general business was nearly normal, or what we may call normal, with the competition that the railroads are faced with now from the air traffic, trucks, and automobiles and water transportation, it is possible for the railroads to make a fair return upon your valuation with the rates now in effect?

Commissioner EASTMAN. That is, of course, a matter of speculation, but my own opinion is that the railroad industry can and will survive notwithstanding the competition. I think competition is going to make it necessary to change their methods in many respects, their forms of operation and their forms of service in certain particulars, and it may require quite elaborate reconstruction of the rate structure before we get through, but I do not feel that the situation is hopeless from the standpoint of the railroads at all, because I think they have so much advantage in costs, particularly when it comes to long-

distance transportation and the transportation of heavy-loading low-grade commodities in large volume.

Mr. SHALLENBERGER. What I had in mind, Mr. Commissioner, was that I have always conceived the justification for a law giving your commission power to fix rates for a great business like the railroads, was that they were a great national monopoly.

Since the railroads now have to meet competition of a very intense nature have you given any thought to the idea that the railroads might be able to take care of themselves and very materially improve their condition if we were to remove some of the restrictions and laws that empower the commission to fix and determine rates, both to raise and lower rates, and return to policies which prevailed in former years, granting the commission only a veto power on rates deemed unfair and too high and allow the railroads within certain fields to meet competition without restriction?

Commissioner EASTMAN. Recently, I have had occasion to look into the history of the beginning of Federal regulation of the railroads and I think it is quite clear from what I have read in that connection that regulation was imposed, not merely to meet the evils of monopoly, but perhaps to a greater degree to meet the evils of competition. One way in which competition resulted was to cause all manner of unjust discriminations between communities and localities and industries and people. That was the result particularly because the railroads had a partial monopoly. Competition existed as to certain classes of traffic and certain places but did not exist as to others.

Now, the tendency in such situations is to cut way down, often way below reason, to meet competition and to raise the rates where there is no competition, or keep them up to extortionate levels. It was quite clear from my reading of history that it was the tremendously widespread and clearly unjustifiable discriminations existing as between shippers which gave rise to the interstate commerce act, or the act to regulate commerce as it was then called, even more than the evils of monopoly per se.

Mr. SHALLENBERGER. Well, is it not a fact that under the present law, the rates which they are allowed to charge the public are placed in the hands of your commission and that you are wrestling with the problem of trying to produce a fair return and to give the public a fair rate which, because of the multitude of questions, involves an almost insoluble problem now? Would it not be more practical and result finally in better service to the country at present if we could return to the sound principles of competition in business?

Commissioner EASTMAN. Well, as I said before, when you come to an industry like the railroad industry, competition unregulated may not only be very disadvantageous to the public, but very disadvantageous to the companies themselves. It gets down to the point where nobody is making anything. We have such a situation in the case of the Panama Canal Lines now. They are not subject to regulation of their port-to-port rates and they are cutting each other's throats, and reducing rates to such an extent that they are beginning to advocate regulation themselves.

I do think this, that under present conditions the commission, in exercising its power to suspend rates, ought probably to be more liberal in that respect than it has been heretofore, particularly in the

case of proposed reductions to meet competitive conditions; but I think that the commission is at the present time showing such liberality. There have been a good many of those cases where the carriers have been allowed to reduce their rates for the purpose of meeting competitive conditions.

It may be of interest to note that the protestants in the case of such reductions are quite as apt to be railroads as they are to be shippers. We have had a good many, or at least a number of cases of proposals to reduce rates, where the suspensions were on the petition of other railroads who thought that the reduction was unwise and unnecessary and would result in demoralization.

Mr. SHALLENBERGER. That is all.

Mr. GARBER. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Garber.

Mr. GARBER. The commission has expressed a preference for H. R. 7117, has it not, Mr. Commissioner?

Commissioner EASTMAN. I think I said in my original statement that that was so, that the majority of the commission would prefer that bill to the other.

Mr. GARBER. Yes. Now, on page 27 of your statement, you have a very concise statement as to what the commission believes Congress ought to do. You say:

In addition to giving the commission authority to preserve just and reasonable rates, subject always to constitutional limitations, all that we believe that Congress can wisely and effectively do is to make it very clear in the law that in regulating the general level of rates the commission shall always keep in mind and be guided in its action by the necessity of producing, so far as possible, revenues which will afford over a reasonable period of years a sufficient basis for the maintenance of a national system of railway transportation at all times adequate to the needs of the public; and at the same time make it clear that rise of revenues with increasing traffic in times of prosperity or their fall with decreasing traffic in times of depression shall not necessarily be regarded as a reason for reducing or increasing rates, as the case may be.

That is a brief and concise statement, as I understand it, of what the commission desires or thinks that the Congress ought to do, and you have embodied that, or it has been embodied in paragraph 2 of section 15a of 7117.

Commissioner EASTMAN. Yes.

Mr. GARBER. Now, I am going to ask you if, beginning with line 10 on page 2, that language would not embody that expression of the commission's belief as to what Congress ought to do, reading:

and the commission shall, so far as practicable, initiate, modify, establish, or adjust rates so that the revenues derived therefrom will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, constitute a sufficient basis for the maintenance of a national system of railway transportation at all times adequate to the needs of the public.

Now then, the question is, supposing that language just read, beginning in line 10, was the law, and you were sitting as a commission to interpret its scope in reference to the admission of evidence, would you not feel perfectly at liberty to admit and duly consider all the elements embodied in paragraphs 1, 2, and 3, above? Could there be any question in your mind, in the adoption of a liberal policy, as to the admission of evidence on the great question of the valuation of property; could there be any question in your mind as to the admis-

sibility of evidence covering the elements in paragraphs numbered 1, 2, and 3?

Commissioner EASTMAN. Well, Mr. Garber, my offhand opinion is that there could be no question. I think that sentence which you have read, or that passage which you have read, is a sort of a broad summation of what goes before it. Now, the only question which occurs to me is whether it includes what is in clause 3, above. A reference is there made to "the necessity, in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service and the meeting and providing for the transportation needs of the public." However, I should be inclined to say to that that there would be no doubt about that coming in also.

Mr. GARBER. However, there would not be any doubt about the elements Nos. 1 and 2 being admissible?

Commissioner EASTMAN. I would not think so.

Mr. GARBER. It is the policy of the commission, is it not, to open the doors and admit all of the evidence offered upon the question of valuation, where it is even remotely connected or related, and to adopt a wide liberal policy in the admission of evidence in its consideration to determine the value of the property?

Commissioner EASTMAN. In our general rate cases affecting the whole country and all of the rates, and also in cases of wide scope embracing the rates on particular commodities within a large territory, such as, for example, the Western Trunk Line class rate case, or the grain case, or the livestock case, I think that in all of those cases evidence bearing upon those points, 1, 2, and 3, was offered and received.

Mr. GARBER. Now, we have under this liberal policy of the admission of evidence in support of the broad delegation of power conveyed in the language beginning in line 10 and continuing down to line 17, if under that delegation of power, all of these elements would be readily admitted and considered by the commission then the question naturally occurs, why the necessity of giving undue emphasis to the elements No. 2 above.

Commissioner EASTMAN. Well, of course, that is a question, whether it is unduly emphasized.

Mr. GARBER. Well, giving the emphasis that that specific statement does. Did you ever stop to consider from the commission's viewpoint as to what effect that might have upon the commission in the exercise of its great powers? Did you ever give that consideration?

Commissioner EASTMAN. Yes.

Mr. GARBER. Well, you have stated in your statement, which all of the members of the committee consider to be a very valuable contribution of information upon all of these subjects, Mr. Commissioner, and we congratulate you upon the exercise of so much industry, and zeal, and ability, for our benefit.

Commissioner EASTMAN. Thank you.

Mr. GARBER. We thank you for it. But, in your statement you attribute the adoption of section 16 15a in the existing law to the influence exercised by the investors. In other words, in substance, you say that section 15a was adopted because of the distrust of the investors of the commission and because of the insistence upon the part of the investors of having a specific declaration by Congress



mandatory to the commission to perform certain duties. With that in view, might not the prominence given to the elements designated by No. 2—do you call that a paragraph, or what?

Commissioner EASTMAN. I would call it a clause.

Mr. GARBER. Well, clause No. 2, keeping what you say in mind, what the investors did in forcing section 15a into the law, could not clause 2 be used by the same investors, being informed that credit must be given due consideration in fixing a rate; could not that be used by the investors, or such financial interests as are back of the roads, to coerce the commission to increase rates or to deter it in the reduction of rates; something similar to what I have in mind in connection with the incident that recently occurred in New York City. The prints say that the financial interests in New York City refused to lend any moneys to the city because they were not in favor of the 5-cent fare.

It occurs to me that this here would give a weapon or a club that would be placed in the hands of the financial interests controlling the credit of the roads, to coerce the commission as indicated.

Commissioner EASTMAN. Well, my feeling in regard to that would be that this is a less rigorous provision in that direction than the one that is in the existing law, and for which I think the investors were largely responsible. I think that the investors would say: We suggested in the beginning, and there was put into the law, a provision which we thought would insure a certain return to the railroads. Notwithstanding that, the commission has not given it sufficient attention from our point of view, and now in place of that provision we are asked to accept something that is not as rigorous.

Mr. GARBER. Well, in this proposed change, we are vesting in the commission the discretionary power to fix the rates within its own discretion, whereas in section 15a we limited that discretion within certain figures,  $5\frac{1}{2}$ , and not exceeding 6 per cent.

Commissioner EASTMAN. For the first two years; not thereafter.

Mr. GARBER. Now, this here would be a change and is a material change from the existing law. This proposal is to change the rate base further by a change in the valuation, is it not?

Commissioner EASTMAN. Well, it does away with the fair-value formula.

Mr. GARBER. In the administration of the law, in determining valuation, the commission does not consider that there is imposed upon them by the law the duty to specify the weight that they give to the various elements that enter into the questions of valuation and which are stated there; do they?

Commissioner EASTMAN. They have not done it.

Mr. GARBER. Well, it is not necessary for them to do it under the law, is it?

Commissioner EASTMAN. No; I do not think it is.

Mr. GARBER. Out of that very provision has grown a wide misconception of the effects of the O'Fallon decision, has there not? The O'Fallon decision did not hold that the commission should state the weight that it gave to the various elements that enter into the question of valuation?

Commissioner EASTMAN. The court said that the question of weight was not in issue.

Mr. GARBER. Yes; that is right; that it was not in issue, and it reversed the case solely upon the ground that the commission refused to consider and did not consider the question of reproduction costs in the case. Is that not true?

Commissioner EASTMAN. That is true.

Mr. GARBER. Reproduction costs, which Congress had specifically stated in section 19a as being a material element for the commission to take into consideration in the determination of the value of the roads property.

You stated that the commission carefully prepared this O'Fallon case as a test case to settle a great many unsettled questions pertaining to valuation and the administration of the law in that respect.

It is authorized by the law for the trial court to refer the question of valuation back to the commission whenever there has been any additional evidence offered or a different finding of fact appearing relating to that question in the trial court, to refer it back to the commission for a reconsideration. That has been the practice, has it not?

Commissioner EASTMAN. I think it has. I can not speak with certainty on that.

Mr. GARBER. Well, that procedure is authorized by the law. I will say that.

Commissioner EASTMAN. Yes.

Mr. GARBER. That is specifically authorized by the law, that where the commission's valuation is called in question in the trial court, the court shall remand it back to the commission for further consideration and the commission can reconsider and refigure the values on the property.

Was that done on the O'Fallon case or not? It does not appear in this decision that it was, although I am not certain.

Commissioner EASTMAN. I suppose that the effect of the decision of the Supreme Court in the O'Fallon case was to remand that case to the commission for the consideration of the evidence which the court thought that the commission had not considered. That was its effect.

Mr. GARBER. Yes; that is the effect of the reversal. That is true. But, I am talking about the procedure before there has been any decision.

Commissioner EASTMAN. Well, there was not any question there, as I recall it, of lack of evidence. The evidence in regard to reproduction cost was there. The question was whether or not the commission had given due consideration to that evidence.

Mr. GARBER. Right upon that question, let me read from the decision:

The weight to be accorded thereto is not the matter before us.

So, it was not the weight to be given the evidence, but it was whether or not the commission had given consideration to what Congress had said was material evidence.

No doubt there are some, perhaps many railroads the ultimate value of which should be placed far below the sum necessary for reproduction. But Congress has directed that values shall be fixed upon a consideration of present costs along with all other pertinent facts; and this mandate must be obeyed.



Here is what the Supreme Court in reference to that case said. It is very brief.

The report of the commission is long and argumentative. Much of it is devoted to general observations relative to the method and purpose of making valuations; many objections are urged to doctrine approved by us; and the superiority of another view is stoutly asserted. It carefully refrains from stating that any consideration whatever was given to present or reproduction costs in estimating the value of the carrier's property. Four dissenting commissioners declare that reproduction costs were not considered; and the report itself confirms their view. Two of the majority avow a like understanding of the course pursued.

Now, Brandeis is the only justice that dissented, and he specifically states that it is unnecessary for a commissioner to state the weight that is being given to any element of proof entering into the question of valuation.

Commissioner EASTMAN. I think that you are in error in stating that Mr. Justice Brandeis was the only dissenting justice. Mr. Justice Stone and Mr. Justice Holmes also dissented.

Mr. GARBER. Did they?

Commissioner EASTMAN. Yes, sir.

Mr. GARBER. I have not read their dissenting opinions; but I call your attention to this fact, because, I infer, from what you say in your statement, that it is this decision that precipitated the action of the commission in getting away from the fair value issue proposition.

Commissioner EASTMAN. Well, I would not say that, Mr. Garber. If there had been no O'Fallon decision at all, I think the objections to recapture and section 15a as a whole which I have stated would still exist.

Mr. GARBER. Well, you state in substance that the decision left a great many undetermined questions and the same degree of uncertainty exists in the law, which prevents its effective administration that did before the decision. Is that not a fact?

Commissioner EASTMAN. Yes.

Mr. GARBER. The only question that I see that they decided in that case is that no consideration was given by the commission to the question of reproduction costs.

Commissioner EASTMAN. I discussed that at some length in this dissenting opinion in the R. F. & P. case to which I referred yesterday.

Mr. GARBER. I will read that then. The question naturally occurs now, with the setting up of clause 2, are you not bringing into this new law the same complexities and difficulties that have always attended the question of valuations?

Commissioner EASTMAN. Well, my own opinion is that it is much simpler and less complex than the present section 15a, and an improvement in that respect upon that. Whether or not we have made the best improvement that can be made is a question of opinion. We have done our best.

Mr. GARBER. Clause 2 requires the fixing of a reasonable rate that would be sufficient to establish and maintain a sufficient credit to attract the necessary capital to meet the needs of transportation and that is certainly a requirement upon which honest men might differ.

Commissioner EASTMAN. You mean as to the necessity for—

Mr. GARBER. No; not as to the necessity, but as to a rate which would establish and maintain a sufficient credit. What would be a sufficient credit now when the bonds of the roads selling as low as—30 and 40 and 50 per cent of their face value?

Commissioner EASTMAN. Well, I think that the rest of the section makes it clear that this is to be considered over a reasonable period of years.

Mr. GARBER. Over a reasonable period of years?

Commissioner EASTMAN. Yes, sir. If you will read the rest of the section, I think that that is made clear that attention is to be directed to a reasonable period of years and not confined to the conditions of the immediate present, which may be abnormal. I do not think there is any escape from the conclusion that the carriers in order to do their transportation work properly, have got to have good credit over a reasonable period of years.

Mr. GARBER. There is no question about the necessity of maintaining credit, but as to giving this degree of prominence to that question and as to what would be sufficient credit at all times would be a continuous source of controversy, it seems to me, especially under existing conditions when bonds are selling so far below their par value. Take the testimony of Mr. Willard, president of the Baltimore & Ohio road, before the Senate committee, in reference to the bonds of his road. What would be a sufficient rate to par those bonds and reestablish the financial credit of the roads under existing conditions? It would be a very difficult question, would it not?

Commissioner EASTMAN. I think it would; yes, sir.

Mr. GARBER. And it would be a question that would be very difficult to administer and create much litigation, the same as all of these other questions have.

Commissioner EASTMAN. Of course, regulation is going to be difficult, whatever you do. You can not get away from that. You can not make it a simple, easy thing. My own opinion is that this provision would not increase the dangers of litigation.

Mr. GARBER. At least 75 per cent of the complexities and difficulties of the administration of the transportation laws arise out of the proposal that the strong roads shall carry the weak.

Commissioner EASTMAN. Well, that is a pretty broad question. I do not think I would want to give any appraisal on that, offhand.

Mr. GARBER. It, however, creates many difficulties in making rates. If you make rates reasonable for one road they are too low for the others.

Commissioner EASTMAN. Well, there are all sorts of difficulties in the administration of the law and regulation of the railroads and I would not, offhand, want to assign any percentage to any particular class.

Mr. GARBER. But, in any event, the consolidation into a convenient number of systems would minimize the difficulties arising out of that phase of the question, would it not?

Commissioner EASTMAN. I think it would have that effect; yes, sir.

Mr. GARBER. I believe that is all.

Mr. HOCH. Mr. Chairman.

The CHAIRMAN. Just a moment, Mr. Hoch, if I may.

Mr. Eastman, it has been suggested that probably there is some misunderstanding about what you meant about competition in your

answer to Mr. Shallenberger, and if you meant competition among the railroads themselves, or you meant competition with other modes of transportation.

Commissioner EASTMAN. I referred, as far as the beginning of the act to regulate commerce was concerned, chiefly to competition of the railroads with each other. About the only outside competition I know of at that time was water competition. That did exist to a considerable extent. Of course, there was not any motor competition, and no pipe line competition, but I think competition is competition, however it is provided, and has the same effect.

The CHAIRMAN. Mr. Hoch.

Mr. HOCH. I would like to pursue somewhat further the proposal for changing the so-called rule of rate making. In order to make clear what I have in mind, I will have to make one or two preliminary observations.

Mr. SHALLENBERGER. Mr. Hoch, would it bother you if I interrupt you for a question or two?

Mr. HOCH. No, sir.

Mr. SHALLENBERGER. What I meant to call attention to, Mr. Commissioner, with regard to competition with the railroads was whether or not it would be proper now with the conditions now confronting the railroads and whether it is not a fact, which I think must be conceded, that during the last 10 years has arisen competition on the outside that has an investment equal, at least, to the value of the railroads. The railroads did not have to contend with that before. So the problem now really that the railroads have to deal with is this outside competition and not competition among themselves. That is what I wanted to refer to. I spoke about that, and the nature of the business, and the question of leaving the railroads in a different condition.

The proposition that we are confronted with now is whether or not that does not affect very materially the rules under which your commission should work, and the law to be passed, if it should not affect it.

Commissioner EASTMAN. Well, I think it does affect the policy which ought to be pursued by the commission.

Mr. SHALLENBERGER. Yes.

Commissioner EASTMAN. I am trying to make the point that I do not think that it follows that those conditions make it wise to suspend regulation entirely.

Mr. SHALLENBERGER. No; I did not mean that either, but I was wondering if we did not have too much regulation.

Mr. HOCH. Prior to the transportation act, the only direction to the commission in relation to rates, as far as that question was concerned, at least, was that the rates should be just and reasonable, and no specific factors were set out in the law which the commission should take into consideration in determining whether rates were just and reasonable.

Now, in the transportation act of 1920, in section 15a, the commission was directed to, quoting now the words of the provision as I recall it, the commission was directed in the exercise of its power to prescribe just and reasonable rates, to provide a fair return on the aggregate value.

That was the first time that any particular factor was called specifically to the attention of the commission for consideration in determining whether rates were in fact just and reasonable.

Now, so far as I know, no advocates of 15a at the time it was enacted, and certainly no witnesses before this committee during the years I have been a member of the committee, have ever contended that the providing of a fair return upon aggregate value was the only element to be taken into consideration in determining whether rates are just and reasonable. Yet, in the major rate cases before the commission, shippers have been confronted with the contention, earnestly made by counsel for railroads, that that was virtually the only thing before the commission to determine as a matter of fact, whether the roads were earning a fair return upon aggregate value.

Now, as I view that construction, it amounts to saying that the only thing for the commission to determine in passing upon the justness or reasonableness of the general rate level is whether the roads are making a fair return upon aggregate value.

Now, I do not understand that the commission has ever accepted that view, and yet, as I say, it has been vigorously contended for by counsel.

Commissioner EASTMAN. You will find a concise statement of the commission's interpretation of the law on that point in the recent Fifteen Per Cent Case, 1931 (178 I. C. C., 539, beginning at page 560).

The CHAIRMAN. May we have that go in the record just there?

Mr. HOCH. I will be glad to have it go in the record.

Commissioner EASTMAN. That is from pages 560 to 566.

(The matter above referred to is printed in the record as follows:)

#### THE QUESTION OF LAW

Before indicating the nature of the opposition, it will be well to consider the contentions of the carriers with respect to the law. Technically, the application is under section 6 of the Interstate commerce act for authority to depart from our ordinary rules governing tariff publication, coupled with a request that we now reach the conclusion, after investigation, that if the contemplated tariffs are filed, they will not be suspended. Fundamentally, however, the carriers rely upon the provisions of section 15a (2) reading as follows:

"(2) In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation; *Provided*, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

Section 1 (5), which antedates section 15a but was reenacted in the 1920 legislation, requires, among other things, all charges made for any service rendered in the transportation of property to be just and reasonable, and it prohibits and declares unlawful "every unjust and unreasonable charge for such service or any part thereof."

Briefly stated, it is the position of the carriers that section 15a changes our duty to prescribe just and reasonable rates by introducing in the law a new standard for our guidance. It is asserted that under the former law a carrier in a competitive group had no legal protection unless the strongest carrier in the group was in a position successfully to assert confiscation of

its property. The rates being competitive, the weaker line had to meet them or go out of the business. The stronger line might not be disposed to assert in the courts its constitutional rights. Even if it were so disposed and succeeded in the assertion, the increase it could secure in the rates would only be that which would bring its own earnings above the line of confiscation of its own property. Such a measure of relief would fall below, perhaps much below, the measure of the constitutional rights of the weaker lines. Prior to 1920, the argument is that we had dealt with revenue considerations as a factor in just and reasonable rates, but had not solved the problem of the treatment of groups of railroads in such a way as to maintain their earnings, their credit and their adequacy as component parts of a national system of transportation. Section 15a was designed to remedy that failure. "In substance," according to the carriers, "the constitutional right of a single carrier to a fair return which could not as a practical matter be asserted was extended to the group as a whole and the commission was given a mandate to render the right productive."

Because of the provisions of section 15a, it is contended that rates, otherwise reasonable, perforce become unreasonably low if the general schedule of rates, of which they are a part, produces revenues which in the aggregate fail to attain the results contemplated by the section. Quoting from the carriers' brief, "It is thus apparent that in any case involving the reasonableness of an increase or decrease in the general rate level, the revenue consideration is paramount and controlling." Quoting again, it is said "that the use of the expression 'just and reasonable rates' in section 15a connotes a different meaning from its use elsewhere and recognizes the paramount financial consideration. It is urged that the section is superimposed upon the power to prescribe just and reasonable rates in such a way that if the effect of the exercise of that power is to bring the revenues above or below the statutory level, adjustments of earnings to that level must be made by us through other changes in rates. The words 'as nearly as may be' in paragraph (2), according to this view, introduce no discretionary factor, but merely cover the mathematical impossibility of attaining the prescribed standard precisely."

In support of this view the carriers rely chiefly upon *Dayton-Goose Creek Ry. v. U. S.* (263 U. S. 456). Among the statements in that opinion which are stressed are the following:

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is \* \* \* by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged (page 478)."

"Rates which as a body enable all the railroads necessary to do the business of a rate territory or section, to enjoy not more than a fair net operating income on the aggregate value of their properties therein economically and efficiently operated, are reasonable from the standpoint of the individual shipper in that section (page 480)."

"It is clearly unsound to say that the net operating profit accruing from a whole rate structure is not relevant evidence in determining whether the sum of the rates is fair. The investment is made on the faith of a profit. The profit accrues from the balance left after deducting expenses from the product of the rates, and the assumption is that the operation is economical and the expenditures are reasonably necessary. If the profit is fair, the sum of the rates is so. If the profit is excessive, the sum of the rates is so. One obvious way to make the sum of the rates reasonable so far as the carrier is concerned is to reduce its profit to what is fair (page 483)."

Among pertinent quotations from other decisions of the Supreme Court is the following from *Wisconsin R. R. Comm. v. C. & Q. R. R. Co.* (257 U. S. 563, 585):

"It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the car-

riers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates, and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill."

The carriers also stress a report of the House Committee when the transportation act, 1920, came out from the conference committee. In this report it was stated that the House bill "continued the existing law authorizing the Interstate Commerce Commission to prescribe just and reasonable rates," but that the Senate amendment "added to the just and reasonable rate a requirement that the rates must be adequate to enable the carriers as a whole to earn a fair return on the aggregate value of their property." It was further stated that the "House receded from its disagreement to these provisions."

Up to a certain point we do not differ with the carriers' interpretation of the law. We agree that our duty with respect to fixing just and reasonable rates was changed by Congress in the act of 1920, through the provision of a modified standard for our guidance. We agree that there was then introduced into the law a new element of protection for the carriers in the public interest, a protection particularly of the credit essential to the preservation of an adequate national system of transportation. We believe that it is our duty under the congressional mandate to exercise our powers in every reasonable and practicable way to the promotion of that end. We agree, as we did in 1920, that in such a general rate proceeding as this, involving primarily revenue considerations, we can not undertake to consider the justness and reasonableness of individual rates.

But there is more than this to be said, if our full duty is to be made clear. In *Reduced Rates 1922* (68 I. C. C. 676, 730), we said, in considering section 15a, "Our function under the law is not that of mere computers and can not thus atrophy." Assuming that the paramount purpose of that section is the provision of adequate revenue for the carriers, it is the actual revenue result of a proposed increase in rates which we must have in mind, and not the effect apparent superficially. We understand that in principle the carriers do not dispute this proposition, although they may differ as to how conclusions upon this point are to be reached. Our own view is that we are not justified in approving a rate increase if we are convinced that such increase will not operate to the revenue advantage of the carriers.

On this point, the following from *Florida v. United States* (232 U. S. 194, 214-215), is pertinent:

"In considering the authority of the commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of the rates to income. The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage. \* \* \*

"The commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

Nor is this all. In *Smyth v. Ames* (169 U. S. 466, 547), the court said: "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

This principle has repeatedly been affirmed by the Supreme Court. It is stated in *Corpus Juris*, volume 10, page 418, and we think accurately:

"The public is entitled to demand that no more shall be exacted from it than the services rendered are reasonably worth, and this right takes precedence even over the right of the carrier to a fair return on its investment when the two rights can not stand together. In consequence, the value of the service to the public is an important factor in determining the reasonableness of the rates charged therefor."

An application of the principle is found in *Covington, etc., Turnpike Co. v. Sandford* (164 U. S. 578, 597), where the court said:

"It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what



is reasonable and just for the public. If the establishment of new lines of transportation should cause a diminution of the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation, operating the road, should be allowed to maintain rates that would be unjust to those who must or do use the property."

We do not understand that Congress, even if it be assumed that it could lawfully have done so, attempted in section 15a to override or discard this basic principle of the law, or that there is anything in the decisions of the Supreme Court which indicates that such a result has been accomplished. In *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, supra, 586, the court said:

"Section 15a confers no power on the commission to deal with the intrastate rates. What is done under that section is to be done by the commission 'in the exercise of its powers to prescribe just and reasonable rates,' i. e., powers derived from previous amendments to the interstate commerce act, \* \* \*"

In the *Dayton-Goose Creek* case, the question at issue was the validity of the recapture clause, and the court was not called upon to define or consider all the factors which affect the determination of reasonable rates. It did say that an individual shipper, because of his interest in the maintenance of "all the railroads necessary to do the business of a rate territory," could not complain of a general level of rates higher than would have been reasonable considering the service rendered him alone. We agree with the carriers that prior to section 15a the revenue needs which we were bound to consider were those of individual carriers, although as a practical matter we have long considered all competing lines and not merely that line which can handle the business cheapest in determining the reasonableness of rates. *Receivers and Shippers Assn. v. C., N. O. & T. P. Ry. Co.*, (18 I. C. C. 440). Thereafter the standard was changed by Congress so that now we are bound to consider instead the revenue needs of the carriers in the aggregate or by groups, and such needs were brought into the foreground and emphasized. In every reasonable and practicable way we must recognize those needs and protect the general credit of the carriers. The direction to maintain an adequate system of transportation was re-affirmed by Congress in the Hoch-Smith Resolution in 1925, U. S. Code, T. 49, sec. 55.

But section 15a has not, in our opinion, made revenue needs the "paramount and controlling" factor in the determination of a reasonable general level of rates. Factors which theretofore were relevant and entitled to consideration, notwithstanding the revenue needs of individual carriers, are still relevant and entitled to consideration, notwithstanding the revenue needs of the carriers in the aggregate or by groups. Among those other factors are the following:

1. *The value of the service to the shipper.*—The relation of the general level of freight rates to the general level of commodity prices is a factor which can not be disregarded, particularly in a time of general financial prostration. Stated in another way, it means consideration of what the traffic can reasonably be made to bear. As the Supreme Court recently said in *Ann Arbor R. Co. v. United States*, (281 U. S. 658, 669), in speaking of certain words in the Hoch-Smith resolution:

"If they mean no more than that the depressed condition of the industry is to be given such consideration as may be reasonable considering the nature and cost of the transportation service and the need for maintaining an adequate transportation service, they work no change in the existing law."

This resolution became law subsequent to the enactment of section 15a.

2. *The volume of business carried on by the carriers and its relation to what may be deemed normal.*—As we said in *Reduced Rates*, 1922, supra, 680:

"The operation of economic forces which have prevented, or which may hereafter prevent, carriers from earning a fair return under the adjustment prevailing does not constitute a bar to determination of what a fair return should be. By the qualifying words 'as nearly as may be,' Congress recognized that conditions during certain periods might prevent such realization under any adjustment of rates."

"Section 15a, reasonably construed, contemplates the determination of a return which the carriers, collectively or in rate groups, may attain over a period of time under rates adjusted from time to time with that object in view. The phrase 'from time to time' does not mean that we should adjust and readjust rates to meet business fluctuations."

It is only necessary to have in mind the incongruous results which would follow an attempt to adjust rates so that a stable rate of return would be realized, notwithstanding general business conditions and the rise and fall of

traffic in consonance therewith, to realize the unreasonableness and impracticability of any such policy. In part this is recognized by the carriers in this very application.

3. *The return realized from the freight service alone as distinguished from other forms of service rendered by the carrier.*—*Nor. Pac. Ry. v. North Dakota* (236 U. S. 585) and *Norfolk & West. Ry. v. West Virginia* (236 U. S. 605). It is not our view that these cases prevent the imposition of a burden upon one form of service to compensate for an inevitable deficiency in earnings of another form of service performed by the same carrier, *Revenues in Western District* (113 I. C. C. 3, 22-23). However, the earnings of the particular service in question are entitled to consideration in the fixing of reasonable rates.

For the moment we express no opinion as to the weight to be given these particular factors in the present proceeding. That will be considered later. But that they are relevant and material factors which must be given consideration we are persuaded. We are here speaking of the general level of rates, as applied to all traffic, or particular forms of traffic, and not of individual rates.

Mr. HOCH. I know of one major rate case where it was contended that all that was needed to be shown on the part of the railroads was that they were not in fact earning a fair return upon aggregate value and if that showing were made it became, ipso facto, the duty of the commission to provide such rates, whether raising them or lowering them, which in the opinion of the commission would provide a fair return upon aggregate value.

Commissioner EASTMAN. I do not recall where that was done, except in the recent 15 per cent case, but I think that what you say comes close to the contention of the carriers there.

Mr. HOCH. I think the contention was also made by prominent counsel of a great railroad in the western grain case.

Now, at least, that provision in the law relating to aggregate value has provided a very great argument at least for those who seek to have the commission disregard all other elements for consideration in determining the justness or reasonableness of rates and, in my view, entirely disregard the essential elements of general economic conditions as to justness and reasonableness of rates not only to railroads, but also to shippers and to the public generally.

Now, in H. R. 7116, it is proposed to direct the attention of the commission specially to something of the same thing as was done in section 15a, instead of directing the commission to provide a fair return upon aggregate value, the commission is directed to find what is called in the bill, H. R. 7116, as a rate base, and then the commission is directed, as near as it can under the certain conditions, to provide a fair return upon that rate base.

In this connection, though it is not the major part of my line of inquiry, I note that in that provision in H. R. 7116, on page 5, the commission is not directed to give consideration to certain factors directly in passing upon the question of whether the rates are just and reasonable, but is directed to give consideration to those factors in determining what percentage, quoting now from line 12 to line 14, on page 5:

What percentage of the aggregate of the contemporaneous rate bases of the operating carriers constitutes a fair return thereon.

That is to say, the first question after they have found these rate bases for the various roads, either individually or in groups, the commission considers then what would be a fair return upon those rate bases, and in determining that question, namely, what is a fair return, whether it should be 5 per cent, 5½ per cent, 6 per cent, or



some other per cent, in determining what should be a fair return, it should give consideration to these certain factors set out in the proposal.

Now, in H. R. 7117, there is an entire abandonment of the proposal to direct the commission in the main, in fixing rates, to provide return upon value or upon the rate bases, and the commission is simply directed to take into consideration particularly certain factors in determining whether rates are just and reasonable.

Now, the question that I have in my mind is whether either under H.R. 7116 or H.R. 7117, shippers would not be confronted with the same sort of argument they have had to meet under section 15a, the contention that the commission must simply determine what rates would bring a fair return, and maintain the credits of the railroads, whether having set out certain factors, and those alone, Congress did not intend that the commission should virtually take into consideration no other factors in determining whether rates are just and reasonable.

Do you not think, Mr. Commissioner, when we set out any factors as a guide to the commission in the determination of whether rates are just and reasonable we ought to be very careful to include all legitimate factors that the commission should take into consideration in passing upon that question?

Commissioner EASTMAN. I do not think that the Congress should endeavor to specify all, exclusive of everything else, because that is very difficult. It would take a good deal of wisdom to say what are the only factors that should be taken into consideration. I think that the addition of the words, "among other things," is always desirable.

Mr. HOCH. I agree with that last statement. The query in my mind is whether having included all other considerations simply in the words "among other things," it will not be held that Congress has minimized the weight that shall be given to all of those things. Would it not be better to go back to the old rule of just and reasonable rates, leaving to the commission to decide what factors should be taken into consideration and what weight should be given to them, rather than to open up the question of undue emphasis by some one upon the particular facts which the law calls attention to?

Commissioner EASTMAN. You can not, of course, prevent various parties from contending anything, but while that argument you speak of has been advanced before the commission, I know of no case where the commission has accepted it, and it was not accepted in the recent advanced rate case. I do not think there is any more danger that such argument would be raised in connection with this new law than in connection with the law which is now on the books. Now, from my own point of view, I do think it is desirable to emphasize these particular factors, particularly in the present condition of the railroads. That is a very important thing which has got to be considered in connection with public regulation, the desirability of maintaining, or rather restoring and maintaining, the credit of the railroads.

Mr. HOCH. Isn't it extremely important to the public generally and the shippers to take into consideration the general economic conditions existing in passing upon the justness and reasonableness of rates?

Commissioner EASTMAN. I think it is.

Mr. HOCH. Why should you not call attention to that in the law?

Commissioner EASTMAN. I think it is called to attention in the sentence below. Perhaps you could change that sentence and bring it out more clearly, but the sentence which begins in line 21, page 2—

Mr. HOCH. That is H. R. 7117?

Commissioner EASTMAN. That is 7117—

the fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or reducing rates, as the case may be;

and it goes on to say—

but it is hereby declared the duty of the commission, in the exercise of its sound discretion, to maintain as far as possible the general level of rates which, over a reasonable period of years, will produce revenue consistent with the standard above set forth.

Now, some think that the traffic of railroads will never get back to its former basis. I do not know whether that is so or not. I do not believe it is so, but if it is, that will present a serious question as to what should be done then.

Mr. HOCH. I do not wish to make a statement in the form of argument, and I am not going to take the time to go into that particular language, although I think there is room for some consideration of change to carry out that idea.

Commissioner EASTMAN. We do not think that we have got it perfect, Mr. Hoch. We did the best that we could, but I have no doubt that you can find ways by which it can be improved.

Mr. HOCH. I do know, Mr. Commissioner, that interpretation of 15a to which I have referred has been considered by the shippers of the country as a very great obstacle to the presentation of their cases before the commission.

Now, in order to shorten this a little, in H. R. 7116, you propose this plan, by the rate base formula, as you call it. If that provision were enacted into law, would it not be open to many of the same objections from an administrative standpoint, at least, that now exist as to the provisions for providing a fair return upon aggregate values?

Commissioner EASTMAN. Of course, all of the valuation difficulties which occur in connection with recapture would be eliminated. We now have to determine an individual value for every road subject to recapture, and for each recapture period, and each and every one presents opportunities for litigation. That would not exist in connection with the rate base formula under H. R. 7116.

Furthermore, we have attempted to get the rate base down to a formula, where, after a basic valuation has been determined, it can be carried on and brought up to date simply by accounting methods. That is the main purpose of it.

Mr. HOCH. Is there agreement now between the carriers and the commission upon any primary valuation or basic valuations that you can refer to?

Commissioner EASTMAN. No agreement; no, sir.

Mr. HOCH. So that question would remain to be adjudicated just as much as under the present law?

Commissioner EASTMAN. Of course, under this rate base formula here, the commission is not tied down to it. It is set up as a guide and we thought that guide would be some protection, particularly to investors and the railroads themselves, but departure and deviation from that guide could not be contested in court in the same way as a deviation from the present fair value formula. And so far as constitutionality is concerned, the only thing that can be contested in court, as I understand it, is whether an individual railroad is receiving a fair return on the value of its individual properties.

Mr. HOCH. Well, on the question of constitutionality, there can not be any question come up whether it is necessary for Congress to specify certain factors that the commission should take into consideration in order to make the act constitutional because the old law did not do that and was, of course, upheld in many cases.

Commissioner EASTMAN. That is correct. I was making the point that even the fair value formula which is in section 15a now goes beyond any constitutional requirements.

Mr. HOCH. That is all, I think now.

The CHAIRMAN. Mr. Commissioner, right at this point, I wish you would put in your statement the section of the bill suggested by the commission with reference to the return of the recaptured money and the disposition of that claim, so that will be before the committee, for I am certain that the committee will want to consider that in its executive sessions, and I would like for you right at this point, if you can, to insert it. I think I can furnish it to you if you do not have it.

(The matter referred to is as follows:)

On and after the effective date of this act, all moneys which were recoverable by and payable to the commission, under the provisions of paragraph (6) of section 15a of the interstate commerce act, as heretofore existing, shall cease to be payable to and recoverable by the commission; and all proceedings pending for the recovery of any such moneys shall be terminated. Within 60 days from and after the passage of this act the commission shall liquidate the general railroad contingent fund as then existing and shall return to each of the carriers which have paid recaptured earnings in to said such proportion of the latter as the amount paid in by such carrier, making appropriate allowances for differences in dates of payment, bears to the total amount of earnings recaptured from all carriers, so that all sums whatsoever realized from such fund or its use shall be distributed to the contributing carriers in proportion to the amount of recaptured earnings paid in by each of them to the general railroad contingent fund, after making the allowances for differences in dates of such payments. The amounts required to be paid out in such liquidation shall be paid by the Secretary of the Treasury out of any funds in the Treasury not otherwise appropriated, on certificates of the commission.

Mr. MAPES. Mr. Chairman, in that connection, may I ask a question?

The CHAIRMAN. Yes, sir.

Mr. MAPES. Mr. Commissioner, is it possible to make any reasonable estimate and if so, will you give it to us, as to how much, in your judgment, it would cost to collect the \$378,000,000 that the commission has estimated the railroads owe this recapture fund and how long it would take to settle the question.

Commissioner EASTMAN. I certainly am not prepared to answer that now and I think it would be extremely difficult to give an estimate because of the uncertainty presented by litigation. Just how much litigation there will be and what time and expense it will

require, I could not say. I think that probably our Bureau of Valuation and Bureau of Accounts can give you the length of time that they would require to bring these cases forward for a final consideration by the commission, although there is an element of uncertainty there as to the time which might be necessary for hearings, but I think that such estimates could be made.

When it comes to the amount of time that will be required for litigation, why, that I do not know.

Mr. MAPES. You can not estimate the length of time or the cost required to settle these questions in the courts?

Commissioner EASTMAN. No.

The CHAIRMAN. Mr. Crosser.

Mr. CROSSER. Mr. Commissioner, Let me ask you whether or not, in your judgment, there is any difference between what is known as a just and reasonable rate; a rate which is nonconfiscatory merely and a fair return, first from the standpoint of law and then from the standpoint of practical administration.

Commissioner EASTMAN. Well, I do not think that there is any difference between a fair rate and a just and reasonable rate.

Mr. CROSSER. A fair return, I meant to say.

Commissioner EASTMAN. But, I think a just and reasonable rate, might, under certain conditions, be in excess of a rate which was nonconfiscatory, and so far as railroad traffic is concerned, I think that the commission recognizes, and I believe the court has recognized, the fact that it is just and reasonable to adjust rates with reference, to some extent, to the ability of the traffic to bear the burden, that is to say, to permit the railroads to get more out of certain traffic than they get out of other traffic.

Mr. CROSSER. As a matter of logic—and I respect your ability in that line—do you think that is a sound position to take?

Commissioner EASTMAN. Yes, sir.

Mr. CROSSER. And in that connection, in the last analysis, is not the question of what is nonconfiscatory determined very largely by what capital would earn in ordinary channels of trade or production and that under regulation utilities can not be asked to accept less than the market rate of interest earned by capital not subjected to regulation.

Commissioner EASTMAN. I do not know whether I understand that question clearly or not. If I understand it, my own opinion is that the court has defined confiscation so broadly and generously that nonconfiscatory rates come pretty close to being just and reasonable rates.

Mr. CROSSER. Yes, I think so; but I am wondering whether or not it does not seem to you that in this particular field the courts frequently in support of decisions which they feel in a general way do justice, set out tests, compliance with which was not previously considered necessary.

Commissioner EASTMAN. I do not think that you ought to ask me to express an opinion on that.

Mr. CROSSER. Of course, the gentleman is right in his attitude.

I just want to ask one other question that is not related to what we are discussing now; but I have had this inquiry from a lawyer in Cleveland and he seems to be having some difficulty in getting this information. Do you have any record available in the commis-

sion of the amounts that have been turned in by the railroads under the recapture clause?

Commissioner EASTMAN. Yes; I have that right here.

Mr. CROSSER. I mean for the whole period of time; not just the last year or two, but for the whole period of time.

Commissioner EASTMAN. Yes; I have a record of the amounts which I can give you. I put the total amount in the record.

Mr. CROSSER. Maybe I was not here when you gave that.

Mr. HUDDLESTON. There is a question that I want to ask with reference to the fair return proposed by this bill. It is my recollection of the decision of the Supreme Court in the Baltimore Street Car case about two years ago, that the court proceeded to find what the earnings of the carrier would be under the prescribed rate and then to hold that, because that earning would not reach a certain percentage which they stated, the order was confiscatory. If I am correct in my recollection, it would seem that any earning less than a fair return is confiscatory.

Commissioner EASTMAN. Well, I think that the court in the Baltimore Street Railway case went very far in defining fair return, I think further than in any other case, and I think further than they will themselves go again. That is just my opinion about it, but they said:

Sound business management requires that after paying all expenses of operation, setting aside the necessary sums for depreciation, payment of interest and reasonable dividends, there should still remain something to be passed to the surplus account and a rate of return which does not admit of that being done is not sufficient to assure confidence in the financial soundness of the utility to maintain its credit and enable it to raise money necessary for the proper discharge of its public duties. In this view of the matter, a return of 6.26 per cent is clearly inadequate. In the light of recent decisions of this court and other Federal decisions, it is not certain that rates securing a return of  $7\frac{1}{2}$  per cent or even 8 per cent on the value of the property would not be necessary to avoid confiscation.

Mr. HUDDLESTON. So that fair return is necessary in order not to be confiscatory, it would seem from that statement.

The CHAIRMAN. Mr. Burtness desires to ask some questions.

Mr. BURTNESS. In the event this committee decides to adopt the formula, or some formula, and we take up H. R. 7116 as our basis for that purpose, I would like to call your attention to the language in line 23 on page 2, which strikes me, at least, as being very unfortunate. Beginning with line 16, without reading all of it:

"In order to provide a basis for the administration of the provisions of this section which will be stable," and so forth, and which will "enable and induce the carriers to supply the transportation needs of the country without undue imposition upon the public served, the commission shall, from time to time and as often as may be necessary, determine a rate base for each operating carrier as of any given date, in the following manner."

Now, it strikes me that the Congress or any other one responsible for this bill in any way would not stand in very good public grace if they wrote a law upon the statute books which contemplated, or which in its words at least seemed to admit, that there must be some "imposition" upon the public in the fixing of rates and simply attempts to prevent an "imposition" which would be "undue." I believe that language should be changed. I do not pretend to suggest the exact

change, but just to indicate my general view it seems to me it would be much better if it should read—

"Enable and induce the carriers to supply the transportation needs of the country", then strike out "without undue imposition" and insert in lieu thereof something like this—

"In a manner fair and just to the public service."

Surely that must be what was contemplated.

Commissioner EASTMAN. Well, I think I was guilty of "undue imposition" and I think your suggestion is a good one. I think that that can be improved.

Mr. BURTNESS. When you revise your remarks in answer to this question, perhaps you might insert some language which you think might be better.

Commissioner EASTMAN. I will be glad to try and do that.

(The suggestion made by Mr. Eastman is that the words "without undue imposition upon the public served" be changed to read "without undue and unfair charges upon the public served".)

Mr. BURTNESS. I think I can get through before the hour of adjournment. I would like to refer to another matter.

The CHAIRMAN. Mr. Burtness, just a moment. I will state to the committee that at the request of one of our members, I would like for the committee to remain in executive session after we adjourn for just a few minutes.

Mr. BURTNESS. I want to refer to the three clauses in the second paragraph of section 15a as proposed to be amended by 7117. Now, as I read those three clauses, it seems to me that the substance of clause 1 and clause 2, or the substance of those two clauses is in fact included in clause 3. That is on page 2. It seems to me that if we include clause 3 so the paragraph will read, "in the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration among other things" and slip down to 3, "to the necessity in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service and the meeting and providing for the transportation needs of the public."

Now, does not adequate service, and does not a provision for the transportation needs of the country, in fact, include clause 1? The only new additional part in it might be the prospective transportation needs, but, of course, the transportation needs of the country are both present and prospective it seems to me, and does it not also include without giving any specific emphasis to it, but actually include under the decisions of the court and under the practice of the Interstate Commerce Commission, what is included in clause 2 a need for the maintenance of a sufficient credit. To meet and provide in a sufficient way for the transportation need—in other words, whether or not clauses 1 and 2 do not simply unduly emphasize two of the factors by repetition.

Commissioner EASTMAN. Well, I think there is redundancy there, and you can boil it down to a simpler statement. It is simply a question of what you want to emphasize.

Mr. BURTNESS. Yes.

Commissioner EASTMAN. Now, those clauses do emphasize the matter of credit. It seems to me that is desirable, but if Congress



does not want to do that, it is not necessary to include those provisions. You can make it simple as you suggest.

Mr. BURTNES. Personally, I have no objection to any language that will take care of the reasonable needs of the railroads from their point of view, but I also am interested in the shippers' angle of it and if certain features that the carriers might be more directly interested in are mentioned two or three times, I think it good legislation to also emphasize similarly those matters in which the shippers are especially interested, but in my view it is better to adopt general language where any one factor is not emphasized any more than any other factor.

The CHAIRMAN. Mr. Commissioner, I have quite a number of questions that I would like to ask you in order to summarize the position of the Interstate Commerce Commission, but I will not try to go into that now, and I feel certain when we have heard the other witnesses, we will want you to come back and I will reserve those questions; and I am sure the other members of the committee have some other questions and they will also reserve them until that time.

Now, to-morrow, we will hear Mr. Fulbright, who has been waiting these three days.

We are very much obliged to you, Mr. Commissioner, for your very informative statement and the time that you have given the committee.

The committee will now stand adjourned until 10 o'clock to-morrow morning.

(Thereupon, at 11.47 o'clock a. m., the committee adjourned until 10 o'clock the following morning, Friday, January 22, 1932.)

## RAILROAD LEGISLATION

FRIDAY, JANUARY 22, 1932

HOUSE OF REPRESENTATIVES, COMMITTEE ON INTERSTATE AND FOREIGN  
COMMERCE

*Washington, D. C.*

(The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

### STATEMENT OF R. C. FULBRIGHT, CHAIRMAN LEGISLATIVE COMMITTEE, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The CHAIRMAN. Mr. Fulbright, you may proceed.

Mr. FULBRIGHT. Mr. Chairman and gentlemen of the committee: My name is R. C. Fulbright. I reside at Houston, Tex. I appear here as chairman of the legislative committee of the National Industrial Traffic League. I am, by profession, an attorney, and have practiced for some 23 years before the Interstate Commerce Commission. Approximately the first 10 years was in the representation of railroads in the Southwest. For the last thirteen and a half years I have represented only shippers' interests in practicing before that body and in the courts, with one or two exceptions where there were combinations of shippers and carriers working together.

I am vice president of the Houston Compress Co. at Houston, Tex., which ships and receives some 20,000 cars of freight per year and it is in that official capacity that I am a member of the National Industrial Traffic League.

I have been chairman of the legislative committee of the National Industrial Traffic League since November, 1921. Prior to that time I was chairman of a similar committee for the Texas Industrial Traffic League, and also for the Southwestern Industrial Traffic League. I am still a member of the legislative committees of those two organizations, which are shippers' organizations in the Southwest, and in speaking here, I shall speak for them as well as for the national organization.

The CHAIRMAN. Mr. Fulbright, I must, as I explained to you, appear before another committee just at this minute. Mr. Corning will preside.

Mr. FULBRIGHT. It having been some time since a representative of the National Industrial Traffic League has appeared before your committee, I think it well that the record here show something about what this organization is.

It is the only national organization of shippers. Its membership is made up of representatives of private industries and trade associations, interested in shipping. It includes in its membership the traffic managers of practically all of the chambers of commerce of the various cities of the country, and of the various trade associations that are organizations of shippers.

Directly, and indirectly, it represents several hundred thousands of shippers. It has no railroad membership. To be eligible as a member, one must be a representative of some concern interested in shipping.

We approach the subject of transportation from the standpoint of the shipper and the public, because our members pay the freight or they are interested in the person who does pay the freight, and in seeing that commerce moves freely.

Nearly all chambers of commerce maintain traffic departments to serve the shippers in their localities. It is the heads of these departments who are carried as members of the organization, so they speak for their own organizations. They are the men who have spent their lives in the study of traffic problems. It is their business. The technique of it, the peculiarities of it, are their problems.

Of course, primarily we are interested in obtaining reasonable, non-discriminatory rates at the lowest possible cost, and efficient railway service.

It has been in existence more than 25 years and it is recognized as being a body which deals with national questions. In many questions relating to railroad traffic we deal with the railroads of the country as a whole. For example, we have helped to bring about the national code of demurrage rules. When there is any change contemplated in those rules, it is handled by our organization with the railroads, as we speak for the shippers.

For many years it has maintained a standing committee on transportation legislation. It is the duty of that committee to keep its members advised as to all developments that may be of interest to them or that may affect transportation or regulation.

The league takes action on policies relating to regulation by first having recommendations made by this legislative committee. They are in turn submitted to an executive committee, made up of some 50 members representing every section of the country, and that recommendation in turn is passed upon by the membership at general membership meetings after it has previously been circulated to all members. In that way, we endeavor to get as thorough consideration as we can, and the viewpoint, as far as we can, of the public in respect to these matters.

In speaking for the league, we also have it understood that if any member has a contrary view, he is, of course, at liberty to express that view, and would not be bound by the general statement.

So far as the matters that I shall cover before this committee are concerned, I think the sentiments are unanimous. At least, the action taken for the last three or four years has been unanimous action.

I hope you will not consider it idle flattery if I just take a moment to express the appreciation of the shippers of this country for the manner in which this committee has, for many years, approached these problems. You have considered them as difficult administrative

questions. This committee has never considered them from any standpoint of political policy, but rather as difficult questions of administration, and the proceedings of the last three days well demonstrate to my mind the interest and ability of this committee in that respect. The shippers want that character of consideration. We desire to see all questions relating to transportation to be considered in a nonpartisan spirit of judicial investigation. We have, at all times, undertaken to advocate the appointments to the commission with a view to maintaining that character of regulation on the part of the commission and the commission's record has been very good in that respect.

I have here a brief statement of our position which I wish to read to the committee, and the rest of my discussion will be from an outline and not a prepared statement. I could not very well prepare a statement, because if I had done so Mr. Eastman would have given a good part of it already and it would be merely a repetition.

The National Industrial Traffic League believes that Congress should at once repeal the present rate making rule of section 15a and substitute therefor a simple flexible rule which will protect the shippers from rate increases in times of depression and will enable the carriers to build up a reserve in times of prosperity, and that Congress should repeal the so-called recapture provisions of section 15a making such repeal retroactive so as to cancel the existing claims and end the tide of litigation incident thereto. We believe that the present law is destructive of the best interests of the public and productive of no good to the carriers.

Section 15a has proven a snare to the shippers and a delusion to the carriers. It is productive of ceaseless litigation and controversy and is not only economically unsound as a principle of rate making but is wholly impracticable as has been demonstrated by its operation. It has not provided the assurance of a standard return through good times and bad as the carriers expected, but, on the other hand, has restricted their earnings in times of prosperity and paralyzed their credit in times of depression. Its mandate to the commission to adjust the rates from time to time so that the carriers may earn as near as may be a standard return, hangs as a serious threat over shippers in depressed times when transportation charges are most burdensome, while, on the other hand, it sets a definite limitation upon the ability of the carriers to build up reserves in times of plenty when the transportation charges are least burdensome to the public. The railroad systems should be a sort of balance wheel of prosperity and should be in a position to build up and improve their properties during times of general business depression when there is a surplus of labor and to conserve expenditures during the peak periods of traffic movement when labor is least plentiful, but the effect of this law is to require them to do the opposite.

It is just as important to the public to have a stable and efficient national system of railway transportation as it is to have the benefit of reasonable rates and charges. We believe that the effects of the business depression, with its necessary loss of traffic to the railroads, combined with the accumulation of numerous huge claims against the railroads on account of operations for previous years, under the unfair operation of the recapture law, to-day constitute the most critical and dangerous situation the railroads of the United States

have ever confronted. Unless something is done to relieve them there is little hope for escape from numerous receiverships, and a general breakdown in the efficiency of transportation operations.

Next to the lack of business incident to the depression the greatest burdens upon the railroads to-day are these accumulated Government claims which have operated to frighten the investors of every class away from railroad securities. Congress is diligently struggling with the problems of governmental action to bring back normal business activity and the railroads of the country necessarily constitute a part of this program.

There is no doubt but what the general public to-day would like to see Congress do something to assist the railroads in their present predicament. We do not believe that this should be done by appropriating treasury funds for the benefit of the railroads beyond the requirements of ordinary business prudence as may be done in the case of industries generally, nor do we believe that an additional transportation burden should be saddled on the public in the shape of increased freight rates and passenger fares. But here is one thing that Congress can do which will relieve the railroads from hundreds of millions of dollars of claims hanging like a millstone upon their credit to-day, without having to appropriate \$1 from the Federal Treasury and without having to increase the transportation charges to a single shipper. On the other hand, the cancellation of these claims and the repeal of this recapture law will save the Government millions of dollars in appropriations for the Interstate Commerce Commission and will save the railroads many more millions of dollars in costs, fees and expenses of interminable litigation. This saving to the railroads is an indirect saving to the shippers because whatever they expend in the conduct of their business becomes, and properly so, a part of their expense deduction thereby making it necessary to increase the transportation bill for the country in order to provide a net return to the carriers.

The foregoing statement of position is very broad, and, unless it is explained in detail, portions thereof may be misunderstood or misconstrued. For example, it is not intended by this statement to imply that the railroads are insolvent, for the fact is many of them have large book surpluses today. Nor is it intended by this statement to indicate that we believe Congress should pass a law directing the commission to raise the level of freight rates as soon as business recovery is had. It must be considered in the light of the league's investigation of the workings of Section 15a for the past twelve years.

Now, it is impossible for me to overestimate the importance of this investigation.

The amounts of money involved, directly and indirectly, in what you are doing now becomes staggering totals when you contemplate them. The maintenance of transportation service to the people of this country is fundamental. It is necessary to the continuance of our every-day necessities of life, necessary to our comfort, as this committee realizes, and I shall not undertake to present that, but it does warrant this committee in giving detailed and careful consideration to every angle of this question before you.

I hope I shall not be tedious in what I shall say to you, because, after all, I have found that this committee in the past has always

taken the time to carefully go into every angle of the questions that are presented to it, and if I get too far afield at any time I hope the chairman will call me back.

I want first to review historically, as briefly as possible, the study and efforts of the National Industrial Traffic League with respect to this section 15a. As was stated by Mr. Eastman, the shippers never advocated it. They did not very actively oppose it, because they did not seriously think there would be any such legislation enacted. The proceedings, or rather the report of this committee, which was read, by Mr. Eastman I think, would have represented pretty well their thoughts on it at the time. Soon after it became a law, a special committee was appointed, made up of a number of the leading industrial traffic men to make a study of the operation of the transportation act of 1920. A large part of that study was devoted to the study of the effect and operation of section 15a.

It so happened that I was made special counsel for that committee, which was prior to the time when I had any official connection with the league.

After about a year's study and exchange of views with our members all over the country, we prepared and submitted a report in November, 1921, to a general membership meeting of the league at Chicago, in which we dealt with several features of the transportation act.

In dealing with this particular feature, the committee recommended that section 15a be repealed, recapture and all, and there be substituted therefor some simple, flexible rate-making rule, giving on the part of Congress, official recognition to the importance of maintaining an efficient transportation system. The meeting did not act on it, but it was discussed and the report circulated to all of the members of the league and a subsequent meeting was to be held, at which action was to be taken upon it.

On January 28, 1922, we met in Washington—at the time of the Knickerbocker snow, by the way—and there was quite a lot of opposition at that time among the members to the repeal of the rate-making rule. There was a disposition on the part of a good many to feel that we ought to study it further, and spend a lot of time in considering its operation; also, that we ought to study the recapture provisions and see how they operated. Up to that time the recapture did not amount to anything, because the railroads had not been making anything hardly at all, and recapture was unimportant, relatively speaking, and the fact is that a great many lawyers thought that it would be knocked out in the courts, particularly railroad lawyers, so they did not give so much consideration to that; but, at any rate, the majority indorsed the report of the committee, and from that time to this, for 10 years, it has been the policy of the National Industrial Traffic League. In the spring of 1922, in the Sixty-seventh Congress, we caused to be introduced a bill, H. R. 11822, which undertook to carry out this resolution.

That bill was drawn up rather hurriedly, and was submitted merely as a tentative bill, for the purpose of getting the suggestion before the committees for consideration.

Now, in the meantime, about 1922 and 1923, there came to be quite a lot of bills introduced, recommending this and that and the other kind of rate-making rule, or scheme for regulating the rail-



roads, some of which we thought were unfair to the railroads. They were destructive. The railroads themselves were more or less panicky, and they felt that if anything should be undertaken they might get legislation that had not been properly considered, and they felt that the transportation act should be further studied.

I think this, coupled with the fact that the recapture clause did not amount to so much then, and coupled with the further fact that we had a lot of members who thought that it ought to be studied further, prevented the league from pursuing that program to a conclusion in those days.

In April, 1924, the Senate Committee on Interstate Commerce, Senator Cummins being then chairman, held hearings on a bill which proposed to repeal section 15a. There were other bills pending which were the subject of discussion before that committee at the time, some of which had one kind and some another kind of rate-making rule. There was thought on the part of some in the Senate that a rate-making rule could be devised based on the market price of the securities, or something like that.

Mr. CORNING. Would you repeat what you said about the resolution of 1922? I did not catch that.

Colonel THOM. I did not catch that either.

Mr. FULBRIGHT. The resolution, action taken in 1922, was that we disapproved the provisions of section 15a and thought that it should be repealed, and that there should be substituted therefor a simple, flexible rule which recognized the right of the carriers to the opportunity under normal conditions to earn a fair return.

Mr. CORNING. Thank you.

Mr. FULBRIGHT. In other words, a statutory expression of what we considered their constitutional right.

That was the result of the committee's deliberation for something over a year, and it was before the whole league for several months.

When the hearings came on in April, 1922, we appeared there and at that time the views which were expressed were somewhat similar to those that will be expressed to you.

The amount of recapture, then, of course, was unknown. In fact, I do not think at that time, the Dayton-Goose Creek case had been decided.

I believe that Judge Bledsoe appeared at the same time, and he answered the contention which many people made that section 15a was an absolute guaranty to the carriers. I shall not undertake to go over what was said at that committee, for the reason that it will be repeated in the course of what I have to say here.

I might say this, however, one of the primary reasons why we objected to the recapture clause was that it was calculated to stimulate in many instances uneconomic operations. We pointed out that, in our judgment, when the railroads were getting up to a point that they were likely to be called upon for one-half of their earnings above a certain point, there was a tendency to spend unduly large amounts for maintenance and other expenditures, because that would reduce the net.

It was more or less of a recurrence of what we had in war times, in 1919 and 1920 when there was a very high tax rate, where industries spent large amounts of money for advertising and other kinds of expenditures on the theory that the Government was paying at least

half of the bill. I have in mind an instance of one particular concern that spent over two million dollars in advertising campaigns, figuring that at least 60 per cent of it was being paid by the Government, because they were in the high tax brackets and it had that same natural, human impulse in the case of some of the carriers, according to our estimation.

We also pointed out at that time the uneconomic base for this rate-making rule. Commissioner Eastman read to you the statement made by Mr. Hanauer, a member of Kuhn, Loeb & Co., which statement was made before the commission in 1922, when the commission was considering reducing the rate level. That statement was read by the speaker then to that committee. It is as good an exposition of the economic fallacy of the rate-making rule as has ever been stated by anyone.

I may say, we did not, however, read the excerpt from the report of this committee, and its prophecy as to what the rate-making rule would be, perhaps, because we were before the Senate committee.

I shall revert to Senator Cummins' attitude on this matter a little more, later on.

Nothing came of that presentation. That is, no action was taken. In 1926, we took action at the annual meeting which contained some things I would like to read to the committee.

I may say that this subject came up every year, as a part of the report of the legislative committee, and has been before our members at every general meeting we have ever had since November, 1921. We, indeed, are the pioneers of the movement that is before this committee to-day. A lot of railroads thought that this was going to do them a lot of good. In many ways they have had disappointment.

Colonel THOM. That what was going to do them a lot of good?

Mr. FULBRIGHT. This rate-making rule which has not been satisfactory to them, I am sure.

Now, in 1926, in the report of the legislative committee which was adopted, I think, without a dissenting vote—there may have been one or two dissenters—we said among other things, the following:

In our last reference was made to various recent court decisions, in which courts have held that present-day cost of reproduction must be considered in fixing a value to be used as a rate basis. There has been no change in the tendency of these decisions. The question has not been passed upon by the courts of last resort with respect to the valuation of the property of common carriers by the Interstate Commerce Commission.

Opposed to this there has arisen a contention for a prudent investment or cost basis, but the Supreme Court has repeatedly held that cost is not value, and it would seem that the provisions of 15a with respect to value must mean the value as of the time that the rates are being fixed.

Under the accounting rules of the Interstate Commerce Commission carriers have a substantial leeway in making improvements in their properties, which are in the nature of maintenance, but which do in fact add to the value of the property. Where these are deducted as current expenses the current earnings are correspondingly reduced and while this may be done to a substantial extent by many of the carriers through manipulation or operation of the accounting rules of the commission, nevertheless, the commission has no authority to reduce the valuation of the properties on the ground that a proper study of the expenditures would have required that many of the maintenance expenses should have been charged to additions and betterments. The theory that this might be done was set to rest by the Supreme Court in a decision rendered on April 12 of this year in the case of the Board of Public Utility Commissioners of New Jersey v. New York Telephone Company.

I shall not read that, because the members of this committee are quite familiar with that decision, which simply held, no matter how they got the money, whether it was wrongly charged to operating expenses or not, if they had put it into certain properties and it increased the value, then the value was the thing to be determined and it could not be reduced because of the fact that part of it had been taken out of operating expenses.

Now, gentlemen, that will give you some idea of why the shippers were greatly concerned over this clause at that time.

Summing up the foregoing, the shippers of the country face the following dilemma: The carriers, under the present accounting rules of the commission, can substantially improve their properties without substantially adding to the investment but the cost of such improvement is largely charged to operating expenses. The operating expenses are built up to such an extent that the carrier shows a small return; whereas, when the matter of valuing the property comes up, courts will require the commission to value the property based on present-day cost and include therein improvements which may have been charged to current operating expenses during prior years.

As an example of the foregoing one might cite the case of reballasting railroad lines. Under the rules of the commission all ballast necessary to reach the maximum height and width of ballast previously applied is charged to operating expenses. If a carrier desired to put on additional ballast to a point three inches above the original maximum height it would charge it to operating expenses not only the ballast to the original maximum height but all of the expense of putting the roadway in shape for the application of all of the ballast and the result may be that new ballast at the increased price has been applied far in excess of the original ballast for the reason that the maximum height and width is the criterion and the reason that all of the incidental expenses, such as engineering and lining up the roadway is also charged to operating expenses.

Many other examples might be cited which show that the carriers can substantially build up their operating expenses in such a way that the value of the property is substantially increased above what necessary maintenance would produce. We believe that the continuation of section 15a as a law will practically force the carriers into the assertion of their rights under the above dilemma and that the repeal of the provision of section 15a would leave the carriers free to follow the general methods pursued prior to the enactment of that law. No carrier is going to pay excess earnings to the Government if it can find a way to improve its properties to an extent that this may be avoided by charging such improvement, or a part thereof, to operating expenses. The carriers can not be blamed for taking this course. It is only a part of their prudence business policy, and on the other hand, when the recapture litigation reaches the court they will very naturally contend that the property must be revalued as of present-day cost, no matter from what source the money came which went into the properties, and irrespective of the fact that any part thereof may have been charged to current operating expenses.

I think that is a very significant statement. Of course, we did not know the extent to which such operations took place. There was no way on earth to tell it. It may or may not be the case, and doubtless there were many carriers where it was not the case, but it was certainly possible to do so.

In 1927, there was a little further development in our attitude toward this legislation, and I wish to read you just a few excerpts from that action, because what was true then, I think, is true now, although the conditions are reversed in many respects.

I might say that, of course, under present-day conditions practically no carrier will be in the recapture class, and none of these conditions would exist.

Mr. HUDDLESTON. Let me ask you this question. You are arguing that the recapture clause is improper, because the carriers will evade

it through improvements charged to maintenance. Is not that argument applicable to any rate regulation?

Mr. FULBRIGHT. No, sir; for this reason—that very question, by the way, was raised at the time—for this reason: The recapture singles out a definite amount of money that the Government is going to take, based upon the operations for that year.

Now, prior to section 15a, the commission, while it gave consideration to the value of properties and to the book investments, never undertook to fix rates based on the operations of any particular year, and if this year is done away with, then that condition will occur again. Of course, you had the added inducement to the carriers that the Government is going to take 50 per cent of this money, put it in a fund not belonging to the Government—the Attorney General says that it was not the Government's property—the Supreme Court said that it did not belong to the Government and was not the property of the shippers, but it is going to be put into that special fund.

It has been my observation, Mr. Huddleston, that under the normal regulations of the commission under the law prior to the 1920 act, the carriers never undertook particularly to build up operating expenses in order to build up their rate basis.

Mr. HUDDLESTON. Except as to the yearly feature of recapture, it seems to me that the situation is unchanged under the transportation act. It has been the practice of the railroads from the beginning to plough earnings into the road, to improve the road constantly. Every well-conducted railroad is constantly adding to what is really its capital investment, and there has been a struggle from the beginning of regulation between the regulatory bodies and the carriers to have a system of accounting which will prevent that. That fight has gone on all of the time. The effort always of the regulatory body is to confine the carriers to a fair return, and the effort of the carriers is to get a fair return and also improve their property as time goes on.

I do not see any difference at all, except in the recapture provision as a periodical thing, if you assume a constant condition of earnings, then the same rule applies to both systems, it seems to me.

Mr. FULBRIGHT. You are correct in your first statement as to what goes on.

There is this distinction, though, that may not be clear to all members of the committee, although I am sure you recognize it, and that is it is perfectly proper for a carrier to plough their earnings back into the property to improve the property wherever improvements are needed—they have done that to an extent of several billion dollars, as I shall later show you, since 1919—provided it goes back in as improvements, additions, and betterments, and they so report it. The great bulk of the improvements have been properly charged as additions and betterments, but there are so many ways under those necessarily more or less loose accounting rules that when it comes to the point of recapture they can skin around them, and there would be a disposition to do so.

Mr. HUDDLESTON. You have not yet shown me anything definite, except as to the annual period of figuring and of accounting.

Mr. FULBRIGHT. In the first place, without the recapture clause, the railroads would keep all of the money that they made.

Mr. HUDDLESTON. It would not be allowed to make the excess under a system of confining their earnings to a fair return.

Mr. FULBRIGHT. Well, it might.

Mr. HUDDLESTON. Unless they juggled accounts so as to improve the road and were permitted to earn more than a fair return, and that is what you are accusing them of doing, and in that you are probably right.

Mr. FULBRIGHT. No, no; wait a minute. It would not, if you took all of the systems in a group; but when you undertake to fix a rate level for a group, we know that some carriers are going to earn more than others.

Mr. HUDDLESTON. Now, then, your argument is addressed to the group system of rate making, and that is quite a different thing.

Mr. FULBRIGHT. Yes.

Mr. HUDDLESTON. I am prepared to agree with much of the criticism you might make of that, but to come back to the proposition of the roads improving their systems and charging it to current maintenance, I can not see any difference in the incentive under either of the systems, except the point I mentioned, that they have got to complete the operation in a year under the recapture system.

Mr. FULBRIGHT. I may illustrate it just this way: Take a road which in a certain year has very good business, and they are having very profitable operation apparently. There is no way for charging that against any other year.

Now, whether or not it affects the rates they can charge, they figure that the Government is going to come in and claim 50 per cent of all of the earnings above a certain point, and that is an additional incentive there, Mr. Huddleston, that would not be there if we did not have the recapture law.

Mr. HUDDLESTON. The incentive would be there; higher rates would be the incentive. We have, for instance, here in the city of Washington, a telephone system and a street-car system which we are trying to regulate. Constantly, the complaint is made that they are improving their property without adding to their capital accounts, yet we have no recapture clause in their regulation.

Mr. FULBRIGHT. In my opinion, that goes on very, very little with the railroads under normal conditions.

Let me add to that this, though, Mr. Huddleston, this league, as the result of this report appointed a special committee to make an examination and to hire experts to go into the accounting rules of the commission, prescribed for railroads. Up to that time the accounting rules of the railroads had been sort of ex parte proceedings. The railroads made their presentation. The commission did not get the other side of it, except as its officers may have developed it, and we felt that this and other things in the accounting rules should not be permitted to continue under any condition. The commission instituted an investigation of the accounting rules because they were then having some controversy with the railroads over them, and we intervened in that.

We have had very extensive hearings and the league has, I think, presented to the commission from the standpoint of the shippers the very dangers that you have referred to.

Now, the commission has already, in the depreciation end of it, issued an opinion and order. In the accounting rules end an opinion

is likely to come out any time. In the meantime they have in a number of respects made the rules more definite and certain so as to prevent some of these things.

Furthermore, in the examination of the accounts the commission has, in many cases found expenditures that they did not think were proper expenditures, and they have disallowed them, thereby increasing the income. Commissioner Eastman told you that the net increase that they had obtained in railway net income as a result of their examinations, was \$61,000,000.

Now, the most of that came about through disallowance of some of these expenditures as current expenses, or they may have been overmaintenance; they may have been chargeable to other years.

Now, this improvement of accounting rules, I think, is going to make largely for the elimination of that difficulty anyway, but you will always have it, because it can not be regulated and you can not police it exactly.

Mr. HUDDLESTON. My thought is that it is a defect inherent in any system of rate regulation that is at least a cost-plus system and discourages efficiency. It promotes waste and extravagance wherever the utilities are able to earn above the limit of a fair return.

Mr. FULBRIGHT. Yes; I think that is so.

Mr. HUDDLESTON. That is, where they are earning up to the limit you can not get away from that if you are going to have regulation. There is no remedy for that regulation. You either have that regulation, or you do not have regulation.

Mr. FULBRIGHT. And the recapture policy and the section 15a policy, intensifies it, Mr. Huddleston.

Mr. HUDDLESTON. During an annual period.

Mr. FULBRIGHT. Yes, sir. Take this for example: A large part of railway improvement, right-of-way improvement, maintenance improvement, is just ordinary common labor. If a road is in the recapture class for a given year it is going to make as much of its maintenance improvements then as it can get by with, at a time when its business is best. When its business is best, all industries along the line are at their height, and labor is less plentiful and the railroads have got to go into the market at that time for the additional labor.

Upon the other hand, if they did not have this year-to-year recapture but would be regulated over a period of years so as to bring about normal conditions they could defer that until the next year; some of those maintenance and improvement costs could be deferred until a time when they were not at the peak of their business. Conversely during the times of depression they can always make their improvements at less cost, because at that time they can not only get plentiful labor but they can usually buy their material cheaper.

It is to the interest of private industry, as well as to the interest of maintenance of a more constant condition of employment on the railroads because if the railroads can make their purchases in times when business is dull they can usually save a good deal of money and it will help business at that time.

But, to have a law that has a tendency to put the peak of all of their expenses at the time of the peak of all of their operations intensifies this naturally human element that you have described as a bad public policy.



We want to get away, as far as we can, from that. We are getting away as far as we can in the improvement of these accounting rules. That is a part of our fight. That is being done by the commission.

This committee, of course, is only concerned as it affects the general policy of protecting the public.

From the report at our 1927 meeting I want to read just the following three or four paragraphs:

At the last annual meeting of the league, the league reiterated its opposition to section 15a as now written and again declared that some statutory declaration should be made respecting the right of the carriers to a fair return. Reference was also made to practical difficulties which were being encountered in the administration of section 19a which provides for valuation of railroad properties. The league also advocated that the recapture provisions of section 15a be repealed and that the repeal be made retroactive.

I may say, that the first time that action was taken by the league, asking for a retroactive repeal of the recapture, was at the 1926 meeting.

Then attention is called to the fact that at the previous session of Congress, through the efforts of this committee, a bill had been introduced designed to accomplish this repeal ab initio and restate the rate-making rule. That bill was introduced by Mr. Newton, then a member of this committee. In a later Congress he introduced another such bill. In that bill we still had a sort of a rate base.

Now, as a matter of fact, our organization does not want a rate base in the law. We thought we could not get a law through that did not have a rate base of some character in it. All of the time, had we been free to write the legislation, we would have gone back to the action in 1922 and prepared something which got away from a rate base or a value base for making or determining the rate level.

I say that, because here to-day you are considering two bills, one of which is on a rate base and one of which is upon a broad policy of undertaking to maintain an efficient transportation machine that is very flexible and we think it should be flexible.

We said:

Your committee has given a great deal of consideration to court decisions and commission action with respect to the administration of section 15a and section 19a. It has reached the conclusion that not only should we get away from the statutory requirements of aggregate value as the basis of rate making but also from the statutory requirements as to ascertainment of value under section 19a.

The investigations which have been conducted under section 19a have developed a great deal of valuable historical information and have served to present a more complete picture of the physical properties of the carriers than could have been obtained in any other manner. While the information may be of value in the administration of the act and in the fixing of rates, fares, and charges, it is not believed that it is a practical benefit either as a rate basis or for the purpose of bringing about unification of carrier properties. The task of ascertaining primary value as of original valuation date should be completed and the data preserved as a part of the commission records, but no further effort should be required by the statute.

I may say that the action in 1927 was the first time we asked that 19a be done away with (except to complete the primary valuation). Of course, the commission should keep a record of additions and betterments under its rules so that such information would be available when it is wanted. That is also the purpose of the provision in these two bills with respect to section 19a as I understand it. And

that position was taken in 1927 and has been continued to be the position of the league.

In this report we introduced a copy of that Newton bill, but we specifically stated that it was tentative only and I do not know that it is of any value to this committee to go back and examine that bill.

I would like to read three more paragraphs from this report because it will shorten other presentation I will make.

The present law places each year on a separate basis in so far as the recapture provisions are concerned and would require the readjustment of the rate level from time to time as the operating revenues of the carriers may vary with existing conditions. In a dull year when there is little business, the rates would have to be increased and in a prosperous year when traffic is heavy, they should be reduced if the commission would enforce the letter of the law.

Now, of course, the commission has not done that. It is correct, as stated by a member of the committee here yesterday, that in some proceedings before the commission the carriers have claimed that the legal interpretation of section 15a was just that, that if they were not making the return that the commission has defined as a standard return, if they can show that, then the commission will have to raise the rates.

There is another school of thought that does not go quite that far but says they have to show also that the increased rates will yield the additional revenue and then the commission will have to raise the rates.

There are two schools of thought on it, Mr. Hoch, among the carriers. One is that the bald statement that you made yesterday, the bald showing that they are not making the return is sufficient to cause the commission to have to carry out this mandate of the statute and adjust the rates.

The other school says that you must also show that the traffic can and will bear the rates; that is, that it will produce additional revenue.

Now, it has been the position of the shippers for the most part that in addition to that they must show that the rates themselves will be just and reasonable and free and untrammelled movement of traffic will be preserved.

Mr. HOCH. Would it interrupt you if I ask you a question there?

Mr. FULBRIGHT. No, sir. That is all right, any time that you desire to ask a question. I have no set speech.

Mr. HOCH. Was my statement yesterday correct, as far as your recollection is concerned, that at the time the transportation act was passed no one contended, publicly at least, that that interpretation that you refer to was the correct interpretation of 15a?

Mr. FULBRIGHT. I never heard of it. I was in quite a few of the hearings before the committees and appeared before the committees, I believe before both committees, in fact, in the consideration of the matter that led to the transportation act.

Mr. HOCH. I recall, at least on one occasion, I think twice, before this committee counsel for railroads have specifically denied that that was their interpretation of 15a.

Mr. FULBRIGHT. Well, there has been quite a divergence of opinion among railroad lawyers, as well as other lawyers, as to what section

15a really means and the extent that the mandate was compelling upon the commission.

Mr. HOCH. Well, is it not true that the bill 7116, which provides for a rate base, will be just as much open to that interpretation as the present law is?

Mr. FULBRIGHT. I think that is substantially true.

Mr. HOCH. But, as I noted yesterday—I did not elaborate upon it—that even these factors which are enumerated in H. R. 7116, which the commission should take into consideration, are not named as factors which they should consider in determining directly whether rates are just and reasonable, but are factors which they shall consider in determining what is a fair return; and, having determined that a certain percentage is a fair return upon the rate base, then there is nothing in the statute that will justify them in giving any further consideration to those factors at all.

Mr. FULBRIGHT. Automatically adjust the rates. I think that 7116 is packed full of litigation.

There will be a great deal of controversy about it. For example, it states that as to carriers whose properties were not inventoried by the commission under section 19a prior to 1922, they shall take as the property investment account of the carrier the amount which the commission finds should have been the property investment account less such depreciation reserve as the commission determines should have been the depreciation reserve.

Now, that means for almost every carrier there is going to be a big controversy on the determination of each of those questions.

I think that you have just switched from a fuss over value to a fuss over the rate base, and that is the reason we do not favor the H. R. 7116. We prefer 7117.

I may say in that connection, gentlemen, that 7117, as soon as it was introduced, was circulated to the members of the league, committee of the organization, and to the members of the executive committee of the organization together with some statement concerning the effect of the same, and I am authorized to state that substantially that bill, with some slight changes which I shall suggest, should meet the approval of the shippers provided it carries with it the cancellation of all of this recapture litigation and in that connection—

Mr. BURTNES. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Mr. BURTNES. Mr. Fulbright, I do not want to misunderstand you. Do you mean that it would not meet with your approval if Congress did not do that?

Mr. FULBRIGHT. It would meet with the approval of the shippers?

Mr. BURTNES. Yes; do you mean that it would not meet with the approval of the shippers unless it also carries a provision for cancellation of excess profits claims?

Mr. FULBRIGHT. I get your point. Perhaps I made a mistake.

Mr. BURTNES. Suppose this committee did not adopt that policy, then would it be your position that we had better maintain rates under section 15a rather than as provided under 7117?

Mr. FULBRIGHT. That is all right.

Mr. BURTNES. I was wondering how strong your proviso was.

Mr. FULBRIGHT. I just want to thank you for leading me out of the hole I was about to get into.

We, of course, have been opposed to recapture from the beginning. That is very clear. We do not think, in the first place, that it is practical, and in the second place we do not think that it is fair; the principle of it is wrong, and we therefore think that it ought to be repealed from the beginning; but we are also against the rate-making rule.

Now, I do not say that we would fight 7117 as it is. We would be very glad to take that legislation in lieu of what we have to-day. We would certainly get away from those evils.

But we wish to recommend that it be amended by an amendment which I have passed to the members of the committee, which provides for the retroactive repeal of the recapture provision.

I wish at this time to furnish the reporter with a suggested amendment to H. R. 7117, supposed to cancel the recapture clause. A copy of that has been furnished to each member of the committee. (The proposed amendment, referred to, is as follows:)

Suggested amendment to H. R. 7117 so as to cancel recapture claims  
Eliminate section 4 in the present bill and add to section 1 two paragraphs to be numbered (4) and (5) reading as follows:

"(4) On and after the effective date of this act, all moneys which were recoverable by and payable to the commission, under the provisions of paragraph (6) of section 15a of the interstate commerce act, as heretofore existing, shall cease to be payable to and recoverable by the commission, and all proceedings pending for the recovery of any such moneys shall be terminated. Within 60 days from and after the passage of this act the commission shall liquidate the general railroad contingent fund as then existing and shall return to each of the carriers who have paid recaptured earnings in to such fund such proportion thereof, after due allowance for differences in dates of payment, as the amount paid in by such carrier bears to the total amount of earnings recaptured from all carriers, so that all sums whatsoever realized from such fund or its use shall be distributed to the contributing carriers in proportion to the amount of recaptured earnings paid in by each of them to the general railroad contingent fund, after making due allowance as aforesaid for differences in dates of payment.

"(5) All requirements and restrictions imposed by the provisions of paragraphs (6), (7), and (8) of section 15a as to the one-half of the excess earnings, as defined therein, which a carrier is permitted to retain, are hereby removed and repealed."

The CHAIRMAN. What difference is there between that and the suggestion of the commission?

Mr. FULBRIGHT. It is based on what the commission sent up originally, submitted to this committee. I have made some little refinements of language there, which I think will improve it some.

I furnished a copy to Commissioner Eastman, but he has not had time, of course, to pass upon it.

Mr. HUDDLESTON. May I ask, does your approval of 7117 include the clauses (1), (2), (3), and so on, on page 2?

Mr. FULBRIGHT. Yes; but we are going to suggest other clauses be put in there, Mr. Huddleston, which I shall get to later, and we are going to suggest a revision of one sentence.

Mr. HUDDLESTON. You approve these in principle?

Mr. FULBRIGHT. Yes, sir.

Mr. HUDDLESTON. You would rather have them in than out?

Mr. FULBRIGHT. Well, you are getting a little ahead of my story, but I am going to say yes.

Mr. HUDDLESTON. That is the story, as far as we have gotten.

Mr. FULBRIGHT. I am going to say yes; and then I shall explain later.

Mr. HUDDLESTON. You would prefer these clauses rather than merely a simple provision that the commission shall fix just and reasonable rates?

Mr. FULBRIGHT. Under ordinary normal conditions, I think that my answer would have to be no; that the shippers would prefer to have a simple requirement that the commission maintain just and reasonable rates, giving consideration to the changes in the conditions from time to time so as to adjust conditions over a period of years, it would consider normal.

Mr. HUDDLESTON. It is not necessary to give the commission instructions of that kind, is it?

Mr. FULBRIGHT. I doubt it.

Mr. HUDDLESTON. Does just and reasonable rate include that?

Mr. FULBRIGHT. I do not think that it is necessary even to do that, and yet, we have had a policy of law here that took each year by itself, and I want to see Congress repudiate that.

Mr. HUDDLESTON. Repudiate that?

Mr. FULBRIGHT. Yes, sir.

Mr. HUDDLESTON. Now, of course, we are passing upon a law, supposedly for normal conditions, which we hope will return some time, and not a piece of emergency legislation.

And, I would suggest that it should be based upon ordinary conditions.

Mr. FULBRIGHT. My answer to your question would be pretty much the same that Commissioner Eastman made.

Mr. HUDDLESTON. I did not ask him that.

Mr. FULBRIGHT. Well, he made those answers, I believe, to some other member of the committee who brought up the same question as to whether or not the inclusion of these specific items does not place undue emphasis upon them, and whether it would not be preferable just to leave the provision that the commission shall see that the rates are just and reasonable.

Now, I am going to go into some discussion of the condition that confronts the railroads to-day. Sometimes, the mere repeal of a law may have a very bad effect, from the standpoint of the conception of the public, which it has of it, and I will get to that later on in this statement.

The CHAIRMAN. Before you go into that, Mr. Fulbright, I would like to hear you state your position on what you think of the policy that has grown up of Congress in laws, not only stating what they want somebody to do, that is their agent, but to go into a declaration, of long declarations of policy. Do you think that is proper law, or not?

Mr. FULBRIGHT. You are asking for my opinion?

The CHAIRMAN. Solely.

Mr. FULBRIGHT. I would say, no.

The CHAIRMAN. Well, is not that the most that page 2 does in this 7117?

Mr. FULBRIGHT. Yes; yet I think that ought to be done to-day; that we ought to have something along that line, and I hope before

I get through the committee will realize some of the reasons why I say that.

The CHAIRMAN. Our trouble, of course, has been with transferring congressional power and duties to boards and commissions, and their complaint has always been, that where and when we started out to enumerate, and did not enumerate all of the contingencies that might arise, that they are more befogged than they would be if we did not start out to enumerate them at all.

Mr. FULBRIGHT. I think that I can find you here a declaration made by the league in 1922 or 1923. We were opposed to statutory rate making, and opposed to Congress promulgating any kind of hide-bound rules under which the commission should make fixed rates. We think that it should be made as flexible as possible, as a general proposition. I think that is generally the view. Certainly it is the view of our organization.

Now, the reason why we have come to the conclusion that the statute at this time should contain some assurance is because of what we conceive to be a very serious situation confronting the carriers in their credit position at the present time. Were it not for that and we were going along normally, I would say that the best thing to do would be to wipe out 15a from the beginning for all time, and forget it, and that the commission would handle the railroad situation just as well as it would if you put all kinds of instructions in there such as are embodied in this bill. That is my judgment, and I think that would be the judgment of my organization, under normal conditions.

Mr. GARBER. May I ask the witness a question?

The CHAIRMAN. Mr. Garber.

Mr. GARBER. Before leaving the discussion of your proposed amendment, in section (4) in relation to repealing the recapture clause, do you consider that the equities of the case would warrant a consideration of a reasonable charge for the administration of the clause to be deducted from the amount returned to the respective carriers?

Mr. FULBRIGHT. No, sir; Mr. Garber, and I might briefly answer that at this time, in this way, because of the very inequitable operation of the recapture. The Pennsylvania could not be called upon to put up a penny of it. The Seaboard Air Line, now in the hands of a receiver, would have to pay part of it. That is one reason.

Mr. GARBER. Well, the charge would only be deducted from the amount paid in by the respective carriers.

Mr. FULBRIGHT. Oh, most of them have not paid anything in. The fellow who had a lawyer fighting for him all of the time, a good lawyer, who knew what he was doing, kept out of paying in anything.

Mr. GARBER. Well, I am referring to the amount paid in.

Mr. FULBRIGHT. You see there has only been about \$12,000,000 paid in.

Mr. GARBER. Now, would the Government be warranted by the equities of the case, its good faith never having been called in question, to aid the weaker roads, would the Government be warranted in deducting a reasonable charge for the administration of it?



Mr. FULBRIGHT. In the first place, the money does not belong to the Government. It does not, under the law, and the Attorney General, I think, issued a very clear exposition of the law on that back in 1923, I think it was.

In the second place, a good part of this money has been paid in by what I would call very weak lines, and you would be putting a burden on them.

For instance, I have in mind a little lumber tap line down in Louisiana. There is a big claim against it. The commission has authorized the abandonment of that property because it can not pay operating expenses.

Now, should you call upon them to pay a part of this, while the Pennsylvania Railroad goes scot free, because Congress adopted a legislative policy that is now found to be unwise? I do not think so. I think it would be very unfair.

Mr. GARBER. I just wanted to get your mature and considered judgment on it, Mr. Fulbright.

Mr. FULBRIGHT. Thank you.

Mr. BURTNES. Mr. Chairman, the whole force of Commissioner Eastman's argument was in favor of cancellation. At that time we had not read the bill that was before us. I assumed during his statement, and his argument, that both of the bills before us provided for cancellation, but on reading them, I find that they provide only for the repeal as to the future. I do not quite understand that.

The CHAIRMAN. That was explained by the chairman on the record.

Mr. BURTNES. That was probably while I was out.

The CHAIRMAN. Mr. Eastman put that section in the record yesterday, the suggestion for the repeal from the beginning, he put that in the record yesterday.

Mr. BURTNES. I see; he probably explained that while I was out.

Mr. FULBRIGHT. Commissioner Eastman really recommended and reported a repeal from the beginning.

Mr. BURTNES. I realized that. So your recommendation now, in so far as your amendment is concerned, your suggestion, so far as that goes, is in entire harmony with the recommendations that were made by Commissioner Eastman?

Mr. FULBRIGHT. It is to carry it out. I think this language is a little better than that recommended by the commissioner. Of course, this committee can consider that.

Mr. BURTNES. I was a little confused as to whether there was any difference between you and Commissioner Eastman.

Mr. FULBRIGHT. I appreciate, gentlemen, your asking me any questions at any time, because we went to understand each other.

Mr. HOCH. Mr. Chairman, I would like to ask a question.

Mr. CHAIRMAN. Mr. Hoch.

Mr. HOCH. Right on this question of the retroactive feature, as I said the other day, that part perplexes me, about this whole thing. The Supreme Court stated that this recapture fund was a trust fund and did not belong to the shippers, and did not belong to the carriers. It was a trust fund held by the carriers for the use of the Government.

Mr. FULBRIGHT. Held by the Government for the use of the carriers?

Mr. HOCH. Well, it is held by the carriers until it is collected.

Mr. FULBRIGHT. Until it is paid in.

Mr. HOCH. Until it is paid in. It is held by the carriers as a trust fund.

Mr. FULBRIGHT. I see.

Mr. HOCH. So, assuming that the commission is correct in its accounting, and there is \$378,000,000 as a just claim upon the carriers. That money that is now held by the carriers is held as a trust fund, is it not?

Mr. FULBRIGHT. According to that theory of the Supreme Court, it would be a fund in a trust created by an act of Congress for the particular purpose, which purpose has never been carried out, and which, I think, can never be carried out, under that law.

Mr. HOCH. Now, as a matter of fact, do you know whether the carriers have set aside this fund into a trust fund, awaiting the final determining of this case, or have gone ahead and used it for other purposes?

Mr. FULBRIGHT. They have gone ahead and used it for other purposes. I am going into quite a generalization—

Mr. HOCH. Now, if that is true, speaking very bluntly, if the commission is correct, that is a violation of the trust, is it not?

Mr. FULBRIGHT. Well, I am going into quite a discussion of that. I do not think that follows at all. I may say now, before going into it more fully, that it does not necessarily follow, because the basis upon which the fund may be determined, the approximate amount of the fund may be determined, is a matter in which there is such a tremendous difference of opinion that there is no way of telling what ought to be set aside by a single carrier.

Mr. HOCH. You know, I prefaced my statement, by assuming that the commission is correct in its accounting, then the carriers now have, or should have, in some fund set aside, \$378,000,000 for the specific purposes stated in the statute; is not that true?

Mr. FULBRIGHT. Theoretically, that is true.

Mr. HOCH. Well, practically, is it not true?

Mr. FULBRIGHT. I do not think so.

Mr. HOCH. I am not talking about the practical wisdom of it, but is not that a statement of the law. I am not meaning to suggest that there may not be justification shown here but if the Supreme Court's statement is correct—of course, we are to assume that it is correct—and if the commission is correct in its accounting, how do you escape the conclusion, as a logical proposition, that there is a certain fund which now exists as a trust fund for a certain purpose?

Mr. FULBRIGHT. I do not see how it is a fund, until they have actually ascertained what it is.

Mr. HOCH. Well, the commission says that they have ascertained and made a claim for it.

Mr. FULBRIGHT. I will give this illustration: The commission has not ascertained what it is. They have made a tentative ascertainment of it. They have got a lot of questions that they are not satisfied on themselves in nearly every one of these cases. I can give you an illustration. Take the New York Central. The New York Central and its affiliated lines, under their reports, say that they have not earned anything that is subject to being set aside in this fund,

and the commission's audit of their accounts shows that they have according to my understanding.

Mr. HOCH. But, Mr. Fulbright, my question—

Mr. FULBRIGHT. May I finish?

Mr. HOCH. Yes.

Mr. FULBRIGHT. The commission, in their interpretation of the definition of what constitutes a system in the statute did not follow what the New York Central did, because of different understanding of what constitutes a system, they found that there would be some recapturable claims against the New York Central.

Now, they set that down for hearing to determine whether or not they came within the statute. They had to go into a lot of evidence on all of those matters, to find out the ways in which the property is handled and the property is managed and all of that, and that still, I believe is undecided.

We do not know whether there is a trust fund or not for the New York Central.

I do not see how we can say that there is a trust fund when the commission has not determined what it is, and the railroads themselves do not know what it is.

Mr. HOCH. Well, the commission has made a finding up to date of certain amounts due to this specific fund by the carriers. Now, Mr. Eastman stated that it was probably somewhat less than \$379,000,000.

Now, of course, if we assume that the commission is all wrong in its accounting, and ultimately that it should be found that there was not anything owing to the Government, of course, there would not be any fund; but we are not justified in assuming that, are we?

Mr. FULBRIGHT. I do not think that that is a correct interpretation of what Mr. Eastman undertook to say. There is only a very small portion of this \$378,000,000 upon which the commission has yet reached the point where it can say that is the amount due. A great deal of this is just absolutely guesswork and in trying to make some estimate for their purposes. For instance, I endeavored to ascertain and asked how much was being claimed against the Southern Pacific, and they said, "Well, we have set up a tentative figure here of \$4,243,051," but that is so indefinite it is just a guess.

Mr. HOCH. Leaving out of consideration those estimates, it is true, is it not, that the commission has made demands upon the carriers for certain payments?

Mr. FULBRIGHT. To keep themselves clear, they made demands just as soon as they could make any kind of a tentative figure. They issued a general form of order so as to take care of everything that the law in its administration required, and that is what they should have done.

Mr. HOCH. Is there any question but what in some years some of the carriers earned materially above the fair return; could there be any question about that in some years?

Mr. FULBRIGHT. No.

Mr. HOCH. Now, to the extent then that they did in those years earn above a fair return, they are holding that excess, are they not, for a certain purpose as set out in the statute?

Mr. FULBRIGHT. Yes.

Mr. HOCH. Now, as a matter of fact, in those cases and eliminating any cases about which there can be any question, have the carriers had any right to use any part of that excess for any purpose other than that provided in the statute?

Mr. FULBRIGHT. Oh, yes; I do not think that the statute as to how it should be used, would apply to that as to the character of the use.

Mr. HUDDLESTON. Mr. Hoch, may I call your attention to something that carries out your suggestion, subsection 5 of section 15a provides that—

it is hereby declared that any carrier which receives such an income so in excess of its fair return, shall hold such part of the excess as hereinafter prescribed as trustee for and shall pay to the United States.

Mr. HOCH. Yes. That is precisely what I had in mind.

Now, then, as a matter of fact, do you know whether the carriers in any of those cases have used any of that excess for purposes other than those provided in the statute?

Mr. FULBRIGHT. Where it has been in some way determined, I do not know; I do not know of any such cases.

Mr. HOCH. Is there any, or has anyone prepared any figures as to the dividends paid by railroads in those years in which they earned upon the basis of those figures at least, an amount in excess of fair return?

Mr. FULBRIGHT. We have made no such compilation, but personally I know some of them paid dividends in years when the recapture clause was in effect.

Mr. HOCH. Did they pay dividends that otherwise would not have been paid, from those excess earnings that were made during those years?

Mr. FULBRIGHT. I do not think so. I do not think that is correct. I do not know of any instance that occurred. I think that some of the carriers pursued a rather unwise dividend policy, but I do not think it would have any reference to that.

The CHAIRMAN. Well, you say that you do not know of any carrier that has paid a dividend that would not have paid a dividend if it had not had to pay over to this claim? Or, you just do not know, probably, is that correct?

Mr. FULBRIGHT. Of course, I have never made any actual check. I would not like to hazard a statement. I do not know anything about it, never having made an actual check. I know some carriers had recapture claims against them, and they paid dividends.

The CHAIRMAN. And larger dividends than they would have paid if they had to pay in to the recapture fund?

Mr. FULBRIGHT. No; I can not say that, because as a matter of fact, those carriers had on their books unappropriated surpluses set up sufficient to meet any possible recapture claim.

The CHAIRMAN. Has that been general among the railroads?

Mr. FULBRIGHT. I think nearly all of the properties in the recapture class have had unappropriated surpluses set up on their books, the unappropriated surpluses, you see, they may have been invested in some securities like some of the securities some of the rest bought, not worth hardly anything to-day; but I do not know of any instance that would indicate that the carrier had gone ahead and paid

out money to stockholders to avoid the recapture in any way. I do not think that has occurred. I may say this, though, that I think that Congress has got to look at this thing from a much broader standpoint than the mere technical proposition as to whether or not the carriers should have earmarked and set aside in the Treasury so many gold notes to meet what it might have conceived to be a claim against it. I realize the meaning of this wording of the statute which is for the purpose of protecting the Government, when it asserts that claim.

Mr. BURTNESS. This claim would be a preferential claim, a trust fund, in the event that the railroad went into the hands of a receiver, or into bankruptcy, or anything of that sort, under the statute?

Mr. FULBRIGHT. In 1924 I cited authorities to support what I thought the contingency would be, that it would be a preferential claim above other creditors, because a claim of the Government, and I do not know whether that would apply to it or not. I would not undertake to go into the niceties of that.

Mr. BURTNESS. After all, the practical question which confronts us is what is the best thing to do with it, whether to cancel it or whether to insist upon its collection, in view of the fact that not only the statute, but the Supreme Court has recently held that these funds, whatever they may be, are not in reality the property of the carrier.

Mr. FULBRIGHT. I do not think any carrier will undertake to go out and put himself beyond the pale by going ahead and paying out this fund when it has been called on to do that. I do not have any idea that that has been done, because I have kept in pretty close touch with the lawyers that are handling these questions for these lines, and I know a number of lawyers who are handling these matters, and you know that lawyers will tell each other things that they would not tell you. I do not think that there has been any of that.

Mr. BURTNESS. Coming down to the practical matter, we will admit that this money is not legally the property of the carriers and it is not the property of the shippers. Now, does it not boil itself down to the question as to whether, because of the fact, possibly, that an injustice has been done to these carriers in the past, we would be justified to give them this money?

Mr. FULBRIGHT. Yes.

Mr. BURTNESS. And that really amounts to pretty nearly the same thing as if we appropriate it out of the Treasury, it seems to me. It happens to be such a fund, because of the operation of provisions of law, and would not have been set aside or collected if it had not been for the excess earnings provisions.

Mr. HOCH. I did not mean by my question to indicate that there is not a practical question to be passed on. It is a practical question, but I do think that whatever the facts are we ought to state them, and if we should decide that cancellation is justifiable we ought to decide on the face of what the law was and not some theory that the law was something else.

Mr. FULBRIGHT. I agree with you there.

Mr. BURTNESS. In view of that fact, I think that this would amount almost to the same thing as an appropriation out of the Treasury of the United States.

Mr. NELSON. I think that you would have to qualify that to some extent, in view of the fact that this fund was set up for trust purposes. How could the question arise as to the appropriation of this out of the Treasury, when it has never been in the Treasury of the United States?

Mr. BURTNESS. It is a trust fund; theoretically it should be in the Treasury of the United States for certain purposes, and by canceling it we would be appropriating it back to the people from whom it was collected.

Mr. FULBRIGHT. Mr. Burtness, the Treasury of the United States could not use that for any governmental purpose.

Mr. BURTNESS. I realize that, of course.

Mr. FULBRIGHT. It is a trust fund, and the trust has failed. That is really what has happened.

Mr. BURTNESS. That is probably true.

Mr. FULBRIGHT. It certainly has failed, we know that.

Mr. BURTNESS. That is the best justification for the proposal.

Mr. FULBRIGHT. Yes.

I was going to add to an answer just here that this contention as to the interpretation of section 15a as to its influence in a particular rate case has been a matter of great concern to many of our members. As to the ordinary rate case where a shipper is dissatisfied with some particular rate, the law is so drawn, and wisely, that he does not have to go and hire a lawyer to handle his case. The traffic man himself goes in and presents his case to the commission and in a lot of these cases they have been confronted by a lot of high-powered railroad lawyers asserting a lot of rights under section 15a. Things like that have just made it more or less of a bugaboo to some of them. Incidentally, it is a very material aid to those of us who get our livelihood out of representing shippers, but my opinion is that the law ought to be as simple as you can make it, in order that the ordinary layman can go before the commission and present his case and get it handled there. I do not believe that in ordinary conditions there is one case out of four in which there is a lawyer retained to handle and yet this rate base will be something else they will be bringing up before them, and it, like the recapture clause, will be very profitable for the lawyers but hard on the fellow that pays the bill.

Now, I want to say this, that this recapture clause, as suggested by Mr. Eastman, had its birth, I believe, in the imagination of Mr. Warfield, who was then president of the Seaboard Air Line. The Seaboard Air Line was more or less of a weak sister in the south. I do not think Mr. Warfield ever dreamed his line would be called on to put in anything in the recapture fund. It was a kind of a line that Senator Cummins felt would get some benefit out of this fund. Senator Cummins's idea was that the rich lines, such as the New York Central, the Pennsylvania, the Union Pacific, Southern Pacific, Illinois Central, and the Burlington should be called upon to create a fund which the commission could administer to help out the weak and maintain a unified transportation machine. He also was very much enamored with those provisions of law which sought to bring about a consolidation of weak lines with strong lines.



I know that he very greatly exaggerated the weak line problem. That was because of his studying of the reports of carriers without knowing whether that carrier was in fact a part of a strong line or not.

But, however it may have been—and I hope that nothing I say about Senator Cummins will give the impression that I am in the least disrespectful to him. He was a great man and one of my best friends.

Mr. NELSON. May I ask a question?

The CHAIRMAN. Mr. Nelson.

Mr. NELSON. I have been very interested in your various propositions Mr. Fulbright, and I can see that perhaps some of them, if put into effect, might be of help to the railroads, but could you tell, in just a word, how all of these things are going to help the shippers, briefly? The time is almost up.

Mr. FULBRIGHT. They are going to help the shippers, because they will help to improve the railroad credit.

Mr. NELSON. Is that all?

Mr. FULBRIGHT. That is one reason. They are going to help the shippers, because they will assist the railroads in getting back where they can buy some of our goods.

Mr. NELSON. Buy what?

Mr. FULBRIGHT. Buy goods.

Mr. NELSON. Is that all?

Mr. FULBRIGHT. They are going to help the shippers in that we will get away from the danger of being called upon, through some court order, to confront an increase of rates at the time when industry can not stand it. It will help the shippers in prosperous times in that we will not have some artificial statute here that we believe will unduly stimulate uneconomic practices upon the part of the railroads.

As I stated in my prepared statement, efficient service is just as important to the shippers as reasonable rates, and we believe that the present condition confronting the carriers is critical.

Mr. NELSON. Which of those do you consider as of the greatest benefit to the shippers, which particular one of those that you have mentioned?

Mr. FULBRIGHT. Well, I would say—

Mr. NELSON. You are liable to get a raise of rates at any time?

Mr. FULBRIGHT. No; I do not think so.

Mr. NELSON. Do you think that this will prevent a raise of rates?

Mr. FULBRIGHT. Of course, I do not believe that the railroads will stop operating if they all went into receiverships, but when you get the roads down to the bottom, it affects all of us. The railroads are just absolutely essential to the lifeblood of our social and economic fabric.

Mr. NELSON. What is the greatest benefit to the shipper of all these things that you have mentioned here during the last hour and a half?

Mr. FULBRIGHT. I would say a flexible system of rate regulation that will assure him efficient and economical transportation is primarily what he wants and that everything I have said is criticising a law that tends to the opposite direction.

Mr. NELSON. Thank you.

Mr. FULBRIGHT. Now, instead of working like the author thought it would do, this law has produced some of the most grotesque results, and I mentioned the Southern Pacific a while ago, with a small claim relatively; the Burlington has a very small one—I do not believe that it has any, according to Mr. Eastman—the Union Pacific's claim is \$8,000,000; the claim against the Southern Railway is several times that.

Now, here is the way it works.

The CHAIRMAN. Mr. Fulbright, we are going to have to adhere to our rule, and stop at this point.

How much more time will it take you to complete what you desire to say? Of course, the committee will take your time to a very great extent.

Mr. FULBRIGHT. Of course, interrogation by the committee has eliminated some of the things I was going to say later. I think perhaps I could get through in another morning's session.

The CHAIRMAN. I would like to speak to the representatives of the class 1 railroads and short lines before they leave this room.

All right, we will adjourn until 10 o'clock, Tuesday morning.

(Thereupon, at 11.46 o'clock a. m., an adjournment was taken until 10 o'clock a. m., Tuesday, January 26, 1932.)

## RAILROAD LEGISLATION

TUESDAY, JANUARY 26, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., Hon. Sam Rayburn (chairman) presiding.

The CHAIRMAN. The committee will come to order.

### STATEMENT OF R. C. FULBRIGHT, CHAIRMAN LEGISLATIVE COMMITTEE THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE— Resumed

The CHAIRMAN. Mr. Fulbright, I dislike very much to start with these few members, but we are going to adhere to our rule to start at 10 o'clock a. m.

You may proceed.

Mr. FULBRIGHT. Statement was made by the speaker at the session Friday to the effect that if the commission had to-day on hand a revolving fund, or the fund of \$378,000,000 claimed, it would be of no substantial benefit to the carriers.

The CHAIRMAN. Who made that statement, Mr. Fulbright?

Mr. FULBRIGHT. I said that.

Commissioner Eastman, in his statement indicated that it would be of some benefit if we had it to-day. Of course, he did not go into detail on it, and I am quite sure that what he had in mind was that there would be some carriers, strong enough, and in a financial condition to-day, with good enough prospects to comply with the requirements of section 15a to the effect that they could furnish assurance of their ability to repay the loan within the time fixed therefor and to meet their other obligations in connection with the loan. The trouble, however, is that those carriers that are really in a condition whereby they could meet that requirement are not the ones that need it worst. The restrictions of the statute are so severe that an agent acting for the Government, and as a trustee of that fund, must keep within those restrictions. That makes it more difficult to get money from the fund, if it were available, than it would be to borrow it, even to-day, through private channels.

When we recessed on Friday, I had just started to give some illustrations of how this recapture law has worked out. Of course, you can have numerous illustrations to demonstrate its unfairness. I just checked up a few roads, some of which I knew about to start with, to see the effect of this recapture provision. I took the Nickel

Plate, the New York, Chicago & St. Louis Ry. Co., which owns approximately twenty-eight hundred miles of road and operates about a hundred miles more, one of the best located properties in the central freight association territory. It is a direct line from St. Louis to Buffalo, through Cleveland and Toledo, and serves a rich territory. Now, they have a recapture claim, according to the figures I saw, of something over \$15,000,000 against that road.

From 1921 to 1931, inclusive; that is, to the end of November, the average earnings upon the book investment of that line were 4 per cent, almost exactly 4 per cent. In 1931, for the 11 months, it earned at the rate of 1.05 per cent.

Mr. HUDDLESTON. During what years did they earn this excess?

Mr. FULBRIGHT. They had, I think, excesses claimed for 1925, 1926, and 1927.

There were no other years when they would be within that class.

I may say in this case, Mr. Huddleston, there is a substantial variation in the carrier's book investment account and what the commission claims to be its value. Value is very much less. But, even under the commission's basis, it would, in most years, be far below the standard return. For example, in 1930, it earned 2.32 per cent upon book investment. In 1921 they earned 3.50 per cent; in 1928, which was a very prosperous year, they earned 4.2 per cent.

Mr. HUDDLESTON. Is it not confusing to make that comparison with book investment, when it has been decided that the value is much less? Who not give the figures based on the value ascertained by the commission?

Mr. FULBRIGHT. I understand that it has not yet been finally ascertained. We know in some cases it is excessive, and, of course, in this case, the amount of the excess I do not know.

Mr. HUDDLESTON. Of course, if you have no idea what the value of the carrier's property is, then any figuring of excess is mere speculation.

Mr. FULBRIGHT. I think that is correct, and yet even as the commission has valued that property, there are only 3 years out of the 11 in which they earned any excess.

Mr. HUDDLESTON. Your calculations call attention, not to the commission's valuation, but to book value.

Mr. FULBRIGHT. And, I wish I could tell you the real valuation, but I can not.

Mr. HUDDLESTON. Can you not tell us what the excess was as determined by the commission?

Mr. FULBRIGHT. I would be very glad to supply that for the record.

Mr. HUDDLESTON. That is the only thing that gives me any help.

Mr. FULBRIGHT. You understand that they are dealing still with a figure that is not finally determined. The figure the commission determined is on the basis that has been condemned by the Supreme Court, so still we do not know what the figures are going to be.

Mr. HUDDLESTON. Then, if we assume that the book value is the true value, there would be no excess to be repaid; is that not correct?

Mr. FULBRIGHT. That is true.

Mr. HUDDLESTON. Then that does not afford the "horrible example" that you are looking for?

Mr. FULBRIGHT. If you take the book value of the carriers as a whole, taking the commission's figures, figures found by the commission, it will run about 95 per cent, because in some cases the commission value exceeded the book value. That is true of our own Texas lines.

Mr. HUDDLESTON. We are talking about this particular carrier.

Mr. FULBRIGHT. Yes; but you understand that so far as the investment that the owners of the property had put into it, they only got 4 per cent for the period.

Now, it may have been improvidently invested; it may not have been.

Mr. HUDDLESTON. Of course, it may not have been invested at all.

Mr. FULBRIGHT. Well, I think it was in that case, but at any rate for the past two years that property has been in a pretty hard way under any basis of valuation.

Now, they also have a half interest—

Mr. HUDDLESTON. Pardon me a minute for interrupting you.

Mr. FULBRIGHT. That is all right. I am glad to have you ask me any questions.

Mr. HUDDLESTON. It seems that in this aspect of your criticism of the recapture clause it is addressed to the fact that it covers an annual period and not a period sufficiently long to be truly representative of the carriers' earning capacities.

Mr. FULBRIGHT. I think that is correct. That is primarily what we have discussed.

Mr. HUDDLESTON. So that if there was a 10-year period instead of a 1-year period, there would be no excess to be recaptured.

Mr. FULBRIGHT. Only in about a very few sporadic instances, and there would be none of the major lines, maybe, if the recapture clause took in a 10-year period.

Mr. HUDDLESTON. It seems that your criticism of the recapture clause is addressed to the annual-period method instead of some other method.

Mr. FULBRIGHT. Well, I think it is. My criticisms the other day were primarily addressed to the policies of the carriers on their expenses as they might affect the shippers.

Now I will deal more as it affects the carriers than it does the shippers, and I may say the shippers are interested in that, indirectly, in wanting to see the most efficient system of transportation that they can get, but I want to point out also that there are a few lines of railroads where if you averaged the whole period, their income would be in excess of 6 per cent on an average. Now, it so happens that the Nickel Plate is in a pretty bad way, but they have a half interest in a line that runs from Toledo to Detroit, known as the Detroit & Toledo Shore Line, 163 miles of road, in which the investment is relatively small because they do not have any very large terminal properties. The investment is only about \$10,000,000. Now, that Detroit & Toledo Shore Line is owned, half, by the Grand Trunk Western, and half by the Nickel Plate. That road is two railroads in one. It has all of the connecting business between Toledo and Detroit for both systems. It is a joint property. As a result of that it has double the traffic, practically, that there would have been for each of the lines if each of the railroads had their own line. In that way it is an economy for both of them, but the Detroit & Toledo



Shore Line has, on the same basis, earned for the whole period, 11 years less one month, about  $8\frac{1}{4}$  per cent on the investment; but, mind you, part of that earning is for the benefit of the Nickel Plate and part of it for the benefit of the Grand Trunk, which is not in recapture as I recall. There are numerous cases where there are terminal properties that I shall get to directly that are owned by a number of lines where the terminal property goes into recapture, but it is very unusual for a class 1 line to go into that class, where you take it as a whole.

Now, another illustration of it is the Denver & Rio Grande Western, operated through the mountains of Colorado, and has been known as a man-killer railroad. Perhaps the most difficult operation, as a whole, of any railroad in the country—for many years that property was in receivership, barely paid operating expenses, and for 5 of the 11 years it made less than 2 per cent on its investment. Against that there is a substantial recapture claim.

I might give you a still better illustration of it, the Orient. I suppose this committee, the members who have been here a good while, will remember the Orient and the tale of its troubles. It was always in the red, and along in 1928 they discovered oil out there, and where it had been operating at a deficit for three of the previous seven years and never made as much as 1 per cent on its investment, in that year it ran right up into recapture class and made about 11 per cent, and in the next year it had some claim against it, as a result of which, although they had many obligations upon which they were in arrears, and although they had run through several years without making anything, as soon as they do make something, why, there is a claim put upon part of the act, and they are put in the recapture class.

There are a number of those examples. I recall one particularly, that I have in mind, the Louisiana & Northwestern. For a number of years they practically did not have anything. They came here and tried to have that road abandoned.

Mr. PARKER. They also wanted to abandon the Orient, or a part of it, did they not?

Mr. FULBRIGHT. No; they came to Congress to get some help in connection with their financing. I have forgotten what it was, Mr. Parker.

Mr. PARKER. I thought that they came here and asked to be allowed to abandon part of the road.

Mr. FULBRIGHT. I do not recall that; but they came up here, I think, trying to get their indebtedness to the Government revised in some way.

The CHAIRMAN. Has the Orient ever paid back what it owed to the Government?

Mr. FULBRIGHT. I can not answer that. I assume it has now, because it made some money.

This Louisiana & Northwestern, in 2 years out of the 11, made some money. It had been operating in the red most of the time until 1922, when they discovered oil in territory in Louisiana served by it, whereupon it jumped into the recapture class for a couple of years.

Now, there are lots of those cases, those kinds of instances. The discovery of oil or mineral may for a time build up the road and

give a large amount of traffic. In the case of oil, that does not last very long, because when pipe lines come into the field a large part of that tonnage is taken away by pipe lines which are more economical transportation facilities for crude oil.

The CHAIRMAN. Mr. Fulbright, was there any very great necessity or any very great wisdom in building the Kansas City, Mexico & Orient, anyhow, in the beginning? What was the promise there?

Mr. FULBRIGHT. I do not think there was.

The CHAIRMAN. What was the promise on that road?

Mr. FULBRIGHT. I do not think there was any very great promise.

The CHAIRMAN. It was a dream on the part of somebody that wanted to go and build a road from Wichita, Kans., to the Pacific, down through Texas and Mexico. They have not got there yet, have they?

Mr. FULBRIGHT. And that leads me to this thought: I believe there are a number of roads that were built without any sufficient economic justification for their being. I have in mind one road that was built by a man who had sold out an invention for a large sum of money. He always had wanted to be a railroad president, so he built a \$20,000,000 railroad paralleling a road that had been in operation for many years, where manifestly both of them could not succeed, and that has been one of our weak lines fastened upon us. That has been my criticism of the tears that have been shed over the weak lines. Some of the weak lines represented an improvident investment to start with, and I never have felt that the man who put his money into a well-located railroad, had gone in and made a wise investment, should be required to turn his earnings over to some man who made an improvident investment.

That is the basic principle of this recapture. It is the basic theory of having this policy to pool the earnings, with which the national Industrial Traffic League is not in sympathy. It has never been, from the beginning.

Mr. MILLIGAN. Mr. Fulbright, have there not been many instances where communities have been built up along those lines and they have become a public necessity to those communities?

Mr. FULBRIGHT. Yes, that is true, and I do not refer in that connection to a road that has been built out in a new, undeveloped territory.

Mr. MILLIGAN. You are referring to parallel lines?

Mr. FULBRIGHT. I am referring to lines that were built where there were already transportation facilities there. Of course, you stopped that in the 1920 act. In the 1920 act you put in a provision that it must be in the public interest before they can build the road.

The CHAIRMAN. Do you think that if that had been in the act since 1887, that that would have cured a lot of our difficulties?

Mr. FULBRIGHT. Undoubtedly.

The CHAIRMAN. We never would have had that situation?

Mr. FULBRIGHT. We never would have had that situation.

The CHAIRMAN. Has not our trouble always been the weak sisters, anyhow?

Mr. FULBRIGHT. That has been, more than anything else, the cause of all of these remedies suggested from time to time, nostrums, to cure the railroad troubles. As I said the other day, it was pri-

marily the principal argument back of Senator Cummins's idea in that feature of this bill.

In 1930—

Colonel THOM. Would you object to repeating your statement, Mr. Chairman? I did not catch it.

The CHAIRMAN. I think I asked if a great deal of our present ills would not have been cured if the convenience and necessity provisions in the act of 1920 had been in effect or had gone into effect with the interstate commerce act in 1887, and that without that a great many of our so-called weak sisters were built, and they have been a very great trouble in trying to find remedies for a difficult condition.

Colonel THOM. Thank you.

The CHAIRMAN. However, allow me to say this: I quite agree with Mr. Milligan that after a railroad is built somewhere, and industries and communities have been built up along it, it is a very great tragedy to rip it up and take it away.

Mr. FULBRIGHT. Certainly. There have been a lot of properties that have had to keep on operating without any profit to the owners, and sometimes at a loss and have been in receiverships, where you could not abandon them because of that condition having arisen. But at the same time, there have been many lines that simply do play an important part—

The CHAIRMAN. Take the Missouri & North Arkansas: The commission allowed the people to cease operations on that line, back several years ago. I remember that I went down to the commission with two representatives from the State of Arkansas and conferred with Mr. Myers. He said, "Now, gentlemen, there is no way for us to keep this railroad running. If you can find anybody that is willing to lose \$300,000 like these people did last year, we will let them operate it."

Mr. Kell finally got that road, did he not?

Mr. FULBRIGHT. I think it did.

The CHAIRMAN. I think that Mr. Kell got the road, and began putting his wheat and other grains over it, and then they struck some oil along it, and it came out in a way. I do not know how far it is out now.

Mr. FULBRIGHT. Well, there has been a great many of those weak lines that have been absorbed through the policy of consolidation. In fact, I would say in the Southwest a large part of our weak-line problem has been solved through the matter of strong lines taking over the weak lines.

The CHAIRMAN. Which is the greatest justification that has been offered for consolidation?

Mr. FULBRIGHT. Yes; that is correct.

In that connection, I want to mention the Louisiana & Arkansas. There is a line of some 400 miles of main line, owning and operating 800 miles in Louisiana and Arkansas. That is a road that was owned originally and operated for many years by people who had large timber interests in that country. That road was conservatively built, conservatively operated, and they had two years in which they ran in the recapture class, 1923 and 1925.

The CHAIRMAN. That is the Louisiana & Arkansas?

Mr. FULBRIGHT. Yes, sir.

And, their earnings for the past three years have averaged around 3 per cent, and for the whole period of 11 years 4.2 per cent upon property investment.

Now, investment in that case is quite close to valuation. I do not remember the exact figures, but it is very close. There is some difference, however.

Now, I want to go back for a minute to the Nickel Plate. Just a minute, because it illustrates another point. They have \$20,260,000 bonds that are maturing this year. They have also equipment obligations in excess of \$1,000,000.

That road, in that connection, I just want to read into the record the range of its bonds and show what happened to it. Its first mortgages are conservative mortgages with a high rating. Its first 4's mature in 1937. They were selling above par in the early part of the year. They declined to 75¼.

Colonel THOM. What year?

Mr. FULBRIGHT. In 1931. These are 1931 ranges I am giving you.

Well now, the mortgage that matures this year, 1932, bears interest at the rate of 6 per cent. A year ago those bonds were selling at 101⅞. That was last spring. Before the close of the year they had gone down to 141½. In other words, for \$145 you bought a \$1,000-mortgage bond of that railroad. Their refunding 5½'s mature in 1974, which are ahead of these other mortgages, sold at 107 in the early part of 1931, and they went down to 18⅞; and the 4½'s, maturing in 1978, went down from 93 to 17.

Now, in the face of these large maturities, in the face of a poor earning road for the past three or four years, is there any question but what the impending claim of the commission for \$15,000,000 against that property is just about the worst thing that can happen to its credit? It is a good part of the answer to the price of \$145 for a \$1,000-mortgage bond on that property.

Now, that is an extreme case, but there are many others that are more or less like it.

The Erie is not much better.

Most of the railroads that are good railroads to-day are confronting a situation where they have a large number of maturing notes. There are not so many in 1932; but in 1933 and 1934, they have a large amount.

The CHAIRMAN. Let me ask you this, Mr. Fulbright: The stockholders and directors, and especially the directors and officers of these roads that you have been talking about, are they not owned in common with the Chesapeake & Ohio and does that not account for some of the condition?

Mr. FULBRIGHT. Why, that is correct, and that is what Mr. Eastman meant when he said that the Chesapeake & Ohio had a lot of other obligations in helping other lines. They have quite a lot of poor relations.

The CHAIRMAN. They made a good return?

Mr. FULBRIGHT. Yes, sir; the Chesapeake & Ohio—I am going to get to the coal roads and deal with that group directly, if you will allow me I will just wait about that.

The CHAIRMAN. They have practically consolidated these roads under a common ownership.

Mr. FULBRIGHT. Common control, not practical consolidation. They have got a long ways to go yet with the commission.

The CHAIRMAN. I know, but when it is actual and not legal, that is another thing.

Mr. FULBRIGHT. I say that there is a group of financiers that are very greatly financially interested in that whole group of lines.

The CHAIRMAN. And, they have, through devices of holding companies, without having gotten consent of the Interstate Commerce Commission, done that.

Mr. FULBRIGHT. Yes. We have got a good deal of it in this report, this investigation that has been made by the committee.

I will speak of how they have acquired that. The point that I am trying to make is that among that group there are a number of lines that are in a most serious situation, so far as their credit is concerned, and the Chesapeake & Ohio, is the one strong line of the group, and is confronted with the largest claim of any single line in the United States, so that it is prevented by that claim from helping the other lines that need the help.

The CHAIRMAN. You believe that any financial group that controls one railroad should be allowed to acquire another without the consent of the Interstate Commerce Commission?

Mr. FULBRIGHT. No, I do not. I was not going to discuss that, because it is not before the committee now.

The CHAIRMAN. I understand that, but it is going to be.

Mr. FULBRIGHT. It is going to be, and I shall be here, when it comes up; that is, if I can.

I must say our organization has gone into that subject, also, Mr. Chairman, as we have into many others. We are acutely interested in all of these problems of transportation, because they affect the shippers. They affect the public, and that is, the prime interest we have, and only interest we have.

No railroad company can have anything to say in our organization. We will not even let a representative in our meetings. They are executive, and sometimes we work along with them, and sometimes we are on the other side from them.

It is not necessary to go into any more examples. I suppose when Mr. Cain comes up with his short-line railroads he will give you hundreds of them and cite inequalities of them, but you will find cases where, for just one year, out of the 11 years since that act has passed, where the carrier has, by some good streak of fortune, in some way, made a good return away above an average return and brought itself in the recapture, and you just can not pick out a period, unless you made the period so long that it would make it practically a permanent proposition, that would not work injustice in some cases.

Now, I want to go from that; I want to go into the effect of section 15a on refinancing. It is desirable that railways be financed in part by bonds and in part by stock. Perhaps the most desirable condition would be—

Colonel THOM. Before the witness gets away from that, may I get you, Mr. Chairman, or some member of the committee, to ask him this question: Whether the fact that some of these roads, some of them are brought into the recapture class, was not due to rates, but due to fortuitous conditions of traffic on those roads.

Mr. FULBRIGHT. I may say that I am going to discuss the rate situation in a general way later. I will answer that question by saying yes, there were. For the most part, it would not be because of rates. It was because of other conditions. I shall point out that the roads with the lowest rates on a ton-mile basis are the ones that have the biggest recapture claims usually.

It has been the theory of some students of transportation that approximately half of the capital structure of railways should be in stock and approximately half in bonds. Of course, that is an ideal. I do not think there has ever been a time when there was as much as 50 per cent of the outstanding capitalization in stock. In 1911 bonds constituted 54.6 per cent; in 1913 it was 54.8 per cent, and the remainder was stock.

Now, it is desirable to have a law so that under normal conditions, railway improvements can be financed certainly as much out of stock sales as out of borrowed money, and that is in the public interest, because if the major part of the value of a carrier consists of bonds, they have got an absolute requirement to pay that interest, and if they do not pay it, why, receivership follows, and with receivership, large expenses, which ultimately come back on the public, also inefficient operation. If the major part of the capitalization is stock, the stockholders simply have to forego their returns, their dividends, and they can do nothing about it.

It is desirable for any business institution to reduce its indebtedness and at least put itself in a safe position so that in times of depression, they will not have such heavy bills of interest to pay. Of course, it has been a part of the policy from the beginning, has been a permanent policy, that a large proportion of the railroads' capitalization, should be bonded indebtedness, with a series of underlying primary mortgages, and series of junior mortgages, or overlying mortgages.

Now, since the first of January, 1920, to the close of 1930, the railroads increased their capitalization over \$3,000,000,000—well, it is \$3,244,000,000 in round figures.

Now, of that amount, approximately two-thirds of it was in bonded indebtedness. \$2,115,193,000 consisted of bonded indebtedness, while the stock capitalization increased only \$1,128,441,000.

Now, remember that we went through a generally prosperous period; we went through a period when it was an easy thing to sell stock, about the greatest era of stock purchasing generally, on the part of the public, that has ever been known, and yet through that period it was significant that the refinancing or new financing obtained by railroads had to be most of it, in the shape of bonds.

Now, why was that? In the first place we have got a policy of law, a theory that on its face restricts the amount that a railroad may earn in any year, no matter how good the times may be, puts a restriction on it, and does not make any provision as to how they can get returns in bad years, just as Mr. Hanauer described.

Now, you are not going to buy stocks in institutions like that, when you can buy stocks in some other utility that does not have that kind of a regulatory restraint hanging over it. That is a simple answer.

And, the total capitalization during the 11 years' period increased 16.6 per cent. Funded indebtedness increased approximately 20 per cent, and the stock about 12½ per cent.



I have referred to the situation as to the bonds. This present market, of course, has affected the price of all bonds, and all securities are at such a low figure that in some instances they seem absurd. But this has been particularly hard on the carriers, because it is necessary for them to do a substantial amount of financing out of junior securities, and when the market for junior securities is gone, why, it somewhat paralyzes their credit. To-day the investing public, when it looks at railroad securities, does not only consider these general market conditions, but they consider also the possibilities of all of these additional claims that may come from the Government, the result of all of this restrictive legislation.

You will not go out here and buy a house if somebody tells you that you are buying a lawsuit. You do not want a lawsuit. You want to invest your money. You will not buy bonds on these railroads if you think that they are going to be thrown into litigation with big claims by the Government, and that operates as an additional restriction. Of course, fundamentally, the big trouble of the railroads is that they just have not got the business. But, added to all of that, all of these things affecting industry generally, you have got the force of these hundreds of millions of dollars that are hanging as claims over them, and we do not know how much they are. In most cases we do not know how much they may develop, in the cases we have not even heard of. It is bound to have a tremendously depressing effect which is cumulative to all of the other ills that affect railroads and industries generally at this time.

I am not going to take your time, but I would like to just read in the record some of the figures. I spoke of the Denver & Rio Grande Western, which has quite a recapture claim against it. Its general 5's declined from 83 to 15 last year. I have in mind, for example, the Western Pacific first mortgage 5's.

Mr. BULWINKLE. Mr. Fulbright, how long has that recapture claim been against the railroads that you just named?

Mr. FULBRIGHT. Well, I can not answer that question. It has been in the development for some time. It has not yet reached the state of litigation.

Mr. BULWINKLE. Then, what did you say their bonds were the 1st of January, 1931?

Mr. FULBRIGHT. I have not got it for the 1st of January, but in the early part of the year, it reached the high.

Mr. BULWINKLE. The early part of the year?

Mr. FULBRIGHT. The early part of the year it was 85, I think it was.

Mr. BULWINKLE. Then, what did it go to in the latter part of 1931?

Mr. FULBRIGHT. Fifteen.

Mr. BULWINKLE. How long has the claim been hanging over that line?

Mr. FULBRIGHT. Well, I can not answer that, but I get your point, and I want to answer your point, and that is that this recapture claim, in normal times with everything going along nicely, with a good outlook for the railroads, it does not operate so badly on their credit, but when they need money worst is when it comes in worst.

Now, remember, a lot of these roads are in good condition on their books.

Mr. BULWINKLE. In connection with that, let me ask you this: What was the price, we will say, of United States Steel stock on the same day?

Mr. FULBRIGHT. Well, I would have to look up those figures, but I can give the range for last year right here. Probably there are some others present who can tell you more about that than I can. I do not have any United States Steel stock. Of course, there was a tremendous decline, as we all know, and when you come to railroad stocks, the Southern Railway went from one hundred and sixty and odd, to 8 or 9, I think it was. I am talking here about bonds, not stocks.

Mr. BULWINKLE. No. Now, coming back to the Nickel Plate. You stated that just now. How long has that claim been hanging over the Nickel Plate?

Mr. FULBRIGHT. I do not know.

Mr. BULWINKLE. Has not that Nickel Plate known of the recapture claim for a good many years?

Mr. FULBRIGHT. No, sir.

Mr. BULWINKLE. Since 1926 or 1927?

Mr. FULBRIGHT. I think probably it was not made known until a year or so ago; two or three years ago. It has been known that they would have a claim, but nobody knew how much it was.

The commission has not gone out and shouted to the world how much they were going to claim, because they realize that it is too indefinite. They have to go through all of this engineering work, and lay a predicate for all of the litigation, before they can get where they can say there is a certain amount.

Mr. BULWINKLE. That is all I care to ask, Mr. Chairman.

Mr. FULBRIGHT. But the point is that recapture claim against the Nickel Plate, five years ago, under conditions then existing would not be such a tremendous burden on the Nickel Plate, however unfair it might be to take money away from the Nickel Plate when we do not take any away from the Pennsylvania that parallels it, which is a strong road.

Mr. BULWINKLE. The point that I wanted to get, Mr. Fulbright, was the recapture clause of section 15a, from your statement just now, is the sole cause of the depression of the bonds of the Nickel Plate, and that other railroad you named.

Mr. FULBRIGHT. I do not mean that. Oh, no; do not understand me to testify to any such a thing as that. That is not correct. All bonds have gone down. We know that. But, the point is, the recapture claim asserts its influence to destroy the credit during the time when the credit is most needed, during the time when the railroad is most seriously in need of its financing.

The impending maturities and present lack of earnings are bad enough of themselves, but when you put on top of that the recapture claim, it makes it a lot worse.

Mr. BULWINKLE. Then, if they had paid this claim when it was made against them, they would not have had this condition existing.

Mr. FULBRIGHT. I do not believe that they have gotten up to the point of demanding it yet.

Mr. BULWINKLE. All right.

Mr. FULBRIGHT. I want you to remember this feature of this law, I tried to stress it the first day. The way that this thing is working

out, it is the most embarrassing thing on earth, because it takes years and years to get to the point of collecting the money, and it will continue to do that from now on, if you keep it in the law, and a different condition obtains entirely when it comes to collecting the money than those when the earnings were had.

Now, that is because you have got to have a judicial ascertainment of value; you have got to have a judicial ascertainment as to how the money was spent; you have got to go into the controversy as to whether there was overmaintenance or undermaintenance, or whether there has been a proper accounting of some item on one account when it should have been on another account, and all of those things.

Mr. PARKER. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Parker.

Mr. PARKER. Mr. Fulbright, can you give any estimate of how much the suit in the case of the O'Fallon cost?

Mr. FULBRIGHT. No. I understand that perhaps that the representatives of the railroads are going into the cost of amending this law. We made some estimates, the league did, about a year and a half ago, of the total costs of the valuations and recapture, and we estimated at that time, at about \$177,000,000, I think it was, something like that.

Mr. PARKER. I was thinking of the costs of litigation that the railroads are likely to encounter, or face, when they go into court and try to adjudicate the cases that we have in mind.

Mr. FULBRIGHT. It runs into a very large figure, because you have got to have expert engineering, and accounting skill, as well as some legal talent, incidentally, and litigation of that kind is very expensive.

Mr. SHALLENBERGER. You are arguing here, Mr. Fulbright, that because the railroads have earned profits under the recapture clause it hurts their credit. I should think that it would help my credit, if I was earning an excessive unfair income.

Mr. FULBRIGHT. Where a road continues to earn a large return it will, of course, not hurt its credit very much to have a claim against it; but in a majority of the instances, the vast majority of the instances, there are just two or three years out of a period of 11 years that it has run up over this mark, and that is where the claim has arisen, and you have had the depression of one period followed by the depression of another, and during the time of the depression is when this becomes most serious.

Mr. SHALLENBERGER. I note in connection with that your answer to Colonel Thom, that these railroads earned their excess profits, as a result of fortuitous traffic. That is, by good fortune they received more traffic than they expected; is that not the reason that any railroad has earned excess profits?

Mr. FULBRIGHT. Well, that is not so easy to answer.

Colonel THOM. My question did include fortuitous business.

Mr. SHALLENBERGER. Very well.

Colonel THOM. I mean some special condition.

Mr. FULBRIGHT. In many cases it is because of some peculiar situation that is temporary, and in very few cases has it been such that there has been a fairly permanent earning above it. There is a case that I shall get to.

Mr. PARKER. I think that one of the cases that was brought out by the short lines was the railroad that runs up into the Yosemite Valley. During the San Francisco exposition they had earnings in excess and were held for recapture, and it was the only year they ever had been out of the red. I think that was testified here by the short-line people when we had the short-line hearings.

Mr. FULBRIGHT. It all goes to show that this recapture did not strike where Senator Cummins thought that it was going to strike, the Pennsylvania and New York Central and the Union Pacific and Southern Pacific. All of their claims are relatively small claims. On the other hand, some roads that were then considered weak have become strong and have gone into large recapture class, while other roads have just had a good year along now and then.

Mr. MILLIGAN. Mr. Fulbright, is it your opinion that the recapture clause should be repealed in toto or spread over a period of years?

Mr. FULBRIGHT. I can not understand or see that any good is going to be accomplished by the retention of the principle of recapture as a principle or policy, no matter how you undertake to spread it.

Mr. MILLIGAN. Then, in your opinion it should be repealed?

Mr. FULBRIGHT. It should be repealed and this endless tide of litigation should be stopped, because you can not collect the money without having an enormous amount of litigation, and, besides, as those claims are made and attempt to collect them it affects the credit of many of the roads to-day. As I stated in my opening statement, they have been built up under a general rate adjustment with which the public, as a whole, is satisfied. The Supreme Court has found this, that the public has no right to their money back; the Supreme Court has found that it does not belong to the Government. It is a trust fund. Now, the trust has failed.

I want that understood, that that is the position of the shippers of the country as a whole. Our organization presents a cross-section of the shippers of the country as a whole.

Mr. GILLEN. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Gillen.

Mr. GILLEN. Mr. Fulbright, can you cite any instance where a railroad line has failed to obtain credit, where a recapture claim was a factor in the refusal to extend the credit?

Mr. FULBRIGHT. The Frisco; the St. Louis & San Francisco, had a \$10,000,000 maturity due last year. They had a recapture claim against them. They finally just made up what they call a "rescue party" to raise that money. They had to pay 7.63 per cent, I believe it was, to get that money. They did succeed in doing it, but at tremendous odds. That was last year. I do not think they could do it at all now.

Take the Frisco as an illustration: That line has had to write to the taxing authorities in my State (Texas) and to two or three other States—Arkansas and Oklahoma—telling them that they were unable to pay the State tax that matures this month. They want to pay the taxes as soon as they can, but they are unable to raise the money, and pay their taxes. And yet, we have got a recapture claim.

Mr. GILLEN. What was the amount of the recapture?

Mr. FULBRIGHT. I do not remember the details of it, Mr. Gillen. I might say to you that I think that the situation that the Nickel Plate confronts is very substantially affected by the claim, when you have got bonds maturing next year that are on the bargain counter.

The Seaboard Air Line went into a receivership, and had a large recapture claim against it. Undoubtedly that interfered with its ability to refinance its obligations.

The Pere Marquette, I think, has suffered the same way. The Pere Marquette has a claim of over \$8,000,000 against it, and only 3 years out of the 11, has run over 6 per cent, and in 1931 it barely paid operating expenses.

Mr. GILLEN. What I was after was whether or not the theory that you advanced is really working out in practical test for the railroads.

Mr. FULBRIGHT. Well, of course, it is difficult to say what was the particular factor.

Mr. GILLEN. What are the specific instances that have come to your attention that have been factors in credit being withheld?

Mr. FULBRIGHT. Mr. Gillen, there is not any question but what it is bound to be a factor in every case of refinancing, where the recapture claim is pending. I would not put up my money for securities as readily where there was a recapture claim involved as I would in some corporation where they were not confronted with that possibility. It is bound to be an element. Of course, everything else is affecting credit now, when you go to borrow money. It is not peculiar to the railroads, but the very stress of these other conditions makes the recapture feature manifest itself. It seems to me to be but natural. If you were called upon to invest in some securities of the Pere Marquette or the Nickel Plate, which serves your State, you would think a long time about this possibility of these claims.

Mr. GILLEN. I can see that, but I just wanted to know how far it had been worked out in actual practice.

Mr. FULBRIGHT. Well, of course, I can not give you details of anything like that. I can only give you my opinions from observation of the sections of the country with which I am familiar. I think that it has very tremendously affected the credit of our southwestern lines.

Mr. SHALENBERGER. Have the railways attempted to set up a reserve fund at any time to take care of recapture claims?

Mr. FULBRIGHT. You are getting to my next point which I wanted to develop. That is a natural question. Why have they not got the money? They have gone through a period of prosperity. Why do they not have the money?

And I want to go back in my answer to that question to what the condition was when the railroads got these properties back from the Government in 1920. The railroad machine in this country was in very bad condition. A very large percentage of their equipment was in bad order. I think there was something more than 25 per cent of the locomotives that were in bad order. A very large percentage of the car equipment was in bad order. They had insufficient equipment for the business of that period. During 1920 we were confronted with car shortages, running sometimes up into several hundred thousand cars. There was a tremendous car shortage. The shippers were unable to get any efficient service on the railroads. It was a very unsatisfactory condition. The railroads had been confronted with a lot of maturing obligations and there was a demand, practically, of the public, that the railroads expend very large sums to enlarge their facilities and put them in shape so they could effi-

ciently serve the public. There was such a demand for capital expenditures to be made by the railroads of this country, from 1920 to 1924, or 1925—

Mr. PARKER. But they put in about \$7,000,000,000.

Mr. FULBRIGHT. I was going to give that.

Mr. PARKER. That is my recollection.

Mr. FULBRIGHT. I was going to give that to you.

Mr. PARKER. \$7,000,000,000 in betterments in 10 years.

Mr. FULBRIGHT. From 1920 to 1930, inclusive, additions and betterments of the Class I railroads, as reported to the commission, was \$8,381,291,000.

Mr. SHALENBERGER. Where did they get the money?

Mr. FULBRIGHT. I am going to tell you about that.

During that period they increased their capitalization by \$3,343,606,000, so that they went out and got that much from the public, by selling bonds for two-thirds of that and stock for one-third. The other five billion they ploughed into it out of their earnings. As a matter of fact, all of the railroads, according to the last annual report of the Interstate Commerce Commission, had a net railway operating income for the 11 years of \$7,835,634,564, which was a half billion dollars less than they spent for additions and betterments during that period. In other words, they spent more money for additions and betterments than their entire net railway operating income.

Mr. MAPES. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. Mr. Fulbright, assuming that the recapture clause of 15a might well be repealed, that is only one item in the section and the section was based upon, as I understand it, the idea of grouping the railroads and allowing a rate which would provide a fair return to all of the railroad properties used for transportation purposes in the group. It seems to me that one of the important things before this committee is to determine how rates are to be made after section 15a is repealed, if it is going to be repealed. I would like to ask you specifically, do you think that this language, this declaration in paragraph (5) of section 15a, as follows, is a true statement:

(5) Inasmuch as it is impossible (without regulation and control of the interests of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation.

Do you think that is a fair statement?

Mr. FULBRIGHT. No: I do not, for conditions to-day, but before I answer that, I would like to correct my previous statement, where I said net income, that they expended more for additions and betterments than their entire net income, I meant entire net railway operating income. I do not mean outside income.

Now, let me answer your question, Mr. Mapes. That is not at all true, as true as it was when this was written. There are cases where that would be the situation to-day, but when this was written there were numerous cases where that would be the case. Take, for example, the Union Pacific, before it obtained the Los Angeles &



Salt Lake Railway. The Los Angeles & Salt Lake had a very small earning, and still has a small earning. It did not have that to spread it over. Now, take the question of numerous weak lines, being acquired by the Santa Fe, and weak lines acquired by lines like the Rock Island and the Santa Fe, and the Pennsylvania, and all of these other lines that have acquired weak lines.

Mr. MAPES. Is it not true to-day and will it not continue to be true until the railroads of the country are merged into a few large systems?

Mr. FULBRIGHT. As they consolidate, it will be less true, of course.

Mr. MAPES. Yes.

Mr. FULBRIGHT. The point I am making is—

Mr. MAPES (interposing). If it is true to any extent, how can the commission fix rates that are fair to all of the roads, and that will give them this credit to which you refer and which, I think, everybody concedes they ought to have, without taking into consideration the group idea of valuation and of rates?

Mr. FULBRIGHT. The commission must take into consideration the needs of the group as a whole, and it means that there must be some cases where earnings are a great deal more than they will be otherwise.

Prior to the time when we had this transportation act, the commission did that very thing.

Mr. MAPES. Is there going to be any way without the group idea, which the bill before us proposes to repeal, is there any way of preventing certain roads from getting this unreasonable return as the statute says and at the same time making it possible for certain other roads to get a fair share of the traffic; is there any way to do that?

Mr. FULBRIGHT. Well, as I say, I do not think there is going to be any case where they would get unreasonable returns. I believe, Mr. Mapes, that if you put your money in a well located property that has had a conservative policy, put itself in a position to give the public the best possible service, and I put my money into one that has had a very poor policy and poorly located, and may compete with you, you are entitled to a better return on that than I am, as a matter of logic.

Mr. MAPES. Do you have the idea that the short-line association will subscribe to that?

Mr. FULBRIGHT. I do not know what they will say.

Mr. MAPES. I think that it is pretty safe to say that they will not.

Mr. FULBRIGHT. I know this—

Mr. MAPES (continuing). Does that not mean that you are going to put out of operation the weak roads?

Mr. FULBRIGHT. Well, some of them probably will go out of operation.

Mr. MAPES. Well, pretty generally?

Mr. FULBRIGHT. No; because, for the most part, they will be gradually absorbed into other systems. If a road has an economic excuse for its existence, ultimately, in my judgment, it will become a part of some one of the major systems. You can just look at the railroad map, in my own territory, the Southwest, and see how that has been going on for the last 50 years. It was accelerated, I think, by the transportation act, with respect to the acquisition of control, but has been going on all of the time, and is still going on in that terri-

tory, and will, until every line that has an economic justification for its existence comes into some particular system that is strong enough to assume its relative burden and participate in a general rate level.

We used to have a lot of lines in Texas, Mr. Mapes, that had what we called arbitrary rates, had a much higher rate obtain than the main line. They were the branch lines.

Now, that has almost disappeared.

Mr. MAPES. If section 15a were repealed, do you think the commission would be justified in allowing a rate which would permit any road to make an unreasonable return?

Mr. FULBRIGHT. No; and I do not think it would.

Mr. MAPES. So there would not be any unreasonable return for any road, under your theory, if the commission did its duty with the section repealed?

Mr. FULBRIGHT. I think that the commission can be relied upon to try to see that the public gets just and reasonable rates at the lowest possible level, which is compatible to the maintenance of the systems of transportation as a whole. In doing so, I do not think that it will permit any road, as a permanent policy, to have what would be a materially unreasonable return. It may have a much better return than some other road, by reason of its location, or by reason of its service, or policy.

Mr. MAPES. If the traffic conditions are such that it gets practically all of the business, under a given rate, it might make a reasonable return and deprive another road of almost any return; is that not true?

Mr. FULBRIGHT. Yes; that is true.

Mr. MAPES. How are you going to avoid that?

Mr. FULBRIGHT. Theoretically, you can not avoid it; but I say practically, the instances have been brought down to where they are relatively few. You can not adjust it; it is not possible to draw any statute that will hew the line exactly, as I see it. Rate making is not an exact science. It is intensely a practical question. It is a practical problem in the first place of the railroads themselves and they are anxious to build up their business and get the traffic. It is a practical problem of the shippers, and the commission, and you can not lay down any rule of thumb by which it may be governed.

Mr. MAPES. Do you think that the bill before us gives the commission as much instruction and as much light in that respect as could reasonably be expected?

Mr. FULBRIGHT. Do you refer to H. R. 7117?

Mr. MAPES. Yes.

Mr. FULBRIGHT. I offered an amendment with respect to recapture, and as to your question, I want to make one or two other suggestions on that bill.

On page 2, in the sixth line, I want to insert another clause, to be numbered 3, and have the existing 3 changed to No. 4, and I want to insert in that this clause 3.

The CHAIRMAN. Which section, Mr. Fulbright?

Mr. FULBRIGHT. Section 1. That is page 2 of the bill, H. R. 7117.

Mr. PARKER. Where does that come, did you say?

Mr. FULBRIGHT (reading):

(3) To the maintenance of rates and charges under which a free movement of commerce may be fostered and preserved.

Mr. BULKWINKLE. That is in line 6?

Mr. FULBRIGHT. Yes, sir; and 3 would be 4. This reads:

(3) To the maintenance of rates and charges under which a free movement of commerce may be fostered and preserved.

Mr. MAPES. Will that help much to avoid the situation I called attention to?

Mr. FULBRIGHT. I think it is a recognition that one of the cardinal things to be maintained is a free movement of commerce. It will not keep one line from earning more net revenue than another line. I hope that we will never have a law that will do that, kill the initiative on the part of railroad men, because that individual initiative and competition is what we want preserved to assure us the best service in the long run. We want a man to have a chance to make a little more than is made on other lines, because that is going to encourage him to do something useful, by giving us a better service, by helping us in some way, in order to help himself, and I hope that we will never get to the point that we have got to equalize everybody and make one road just have the same opportunity, and be entitled to earn just as much as any other road, because, if you do, your individual initiative is gone, and that is a very vital issue. That is what has made the railroads of this country what they are to-day.

When we were up here on the consolidation bill, as you remember, we fought the railroads, because they did not have in that bill a specific provision that the competition was to be substantially preserved, and this committee decided that we were right in the matter and the railroads came then and said they would go along with us on it.

Now, we do not want that eliminated. We think that that is one of the tendencies of section 15a, to discourage that initiative, and you can not get any law that will leave that initiative, that will not let one road earn more than another.

Now, the commission has got to deal with that section 2 the best it can. Commissioner Eastman referred to these coal roads over here in Virginia. He said, now, the coal industry is in a pretty bad situation, because of competition, and that there may be consideration given to the lowering of rates and outlet to tidewater to help that industry, and in that way they will take back from the roads some of the money that they have built up in the handling of that traffic.

Those are all practical problems. We have got to meet every one of them, when they come along, and in my judgment, they can not be met by a rule of the statute, but they have got to be met by the commission and by the shippers, and the railroads in their day-to-day controversies.

Mr. MAPES. To the extent that theory is adopted, it seems to me that we abandon the plan of building up an efficient transportation system for the country as a whole.

Mr. FULBRIGHT. Not at all. We are in favor of consolidations, consolidations which will strengthen the financial structure and

make better rail systems. We would rather have two strong systems competing for our business than to have one strong system and one weak system.

Mr. MAPES. Perhaps I should have qualified what I said, until the roads are all merged into a few large competing systems.

Mr. FULBRIGHT. Mr. Mapes, they have pretty nearly done that. There has been enormous progress in that direction. Rome was not built in a day, and this can not be done in a day.

We believe that we should just let the thing follow natural economic courses, with some general guidance, such as this committee promulgated in your consolidation bill here two or three years ago, with some protection against indirect holding companies evading that statute.

We believe in the natural course of business that there will come a number of rail systems in each section of the country, competing for the business, and the weak-line problem will completely disappear. It has largely disappeared in the last 11 years. In some sections it is largely gone.

Mr. PARKER. Mr. Chairman, I know that when the New York Central wanted to buy some of the small lines, that the commission insisted that the New York Central should buy, when they were given permission to buy the rest of those lines, they had to buy certain other lines.

Mr. FULBRIGHT. I know there was a large number, but I can not answer as to that.

Mr. PARKER. Well, I know they are all up in my State.

Mr. FULBRIGHT. Yes.

Mr. PARKER. The Delaware & Ulster was one.

Mr. FULBRIGHT. Yes.

Mr. PARKER. And one of the roads was one that went up to Johnstown, and one or two other small, weak roads, that the New York Central desired to buy, and when they came before the commission and asked for permission to buy them, I think the rest of the Big Four.

Mr. FULBRIGHT. Yes.

Mr. PARKER. And, one of the terms of the permission was that they should buy and operate those roads. I know, in the papers just the other day, it was stated that they had just agreed to the price, for instance, to the Delaware & Ulster. The Delaware & Ulster has been a white elephant always. It does not run through my territory, but it has never been a money-maker.

Mr. FULBRIGHT. Does section 15a have anything to do with that?

Mr. PARKER. I will grant you that. What brought that to my mind was the questions of Mr. Mapes.

Colonel THOM. Mr. Chairman, may I say this in that connection, Mr. Chairman?

The CHAIRMAN. Mr. Thom, just a moment, please.

Colonel THOM. I just wanted to make a statement in that connection that the commission made public its finding in respect to the Southern Pacific acquiring the Cotton Belt, and attached the conditions under which the Southern Pacific could acquire the Cotton Belt, and required it to also acquire two short lines in that immediate territory.

Mr. FULBRIGHT. And, by the way, there is another illustration. The Cotton Belt's first term union bonds, maturing in 1952 had gone down to 15 at the close of the year. Those are bonds that back in 1930 sold above par.

Now then, this consolidation policy, which is also being encouraged, I think, by Congress, has in other ways helped to bring about the difficulties of the railroads to-day—for example, I do not know this except from hearsay, but I understand that the Baltimore & Ohio, in acquiring the Alton, had to borrow some money on short-term notes, my recollection is, about \$19,000,000. This may not be accurate. But, those were short-term obligations to take over a property that was in receivership, and the people served by that line wanted to see it in some strong hands. It had been very weak, and there was that kind of obligation there. There have been a lot of those accumulating.

For example, in the year 1932, the railroads have the lowest volume of maturing bonds of any year that I can recall, only about something less than \$70,000,000 bonds mature this year. They have got \$110,000,000 of equipment obligations maturing this year; they have got about \$243,000,000 of short-term notes maturing, which runs the whole total up to something over \$400,000,000.

Now, that, of course, makes that situation pretty acute, in many cases, and yet a great deal of those obligations have been incurred in buying weak lines, or in carrying out something that they thought was in the public interest.

I have in mind, for example, Buffalo, up in your section, where the New York Central had started a program of rebuilding the terminal in Buffalo, that, in the long run, will render it more able to efficiently and economically serve the public.

They are spending many millions of dollars.

Now, the New York Central borrowed a good deal of that money on short-term notes. Conditions are such that they thought that they would have difficulty to do any long-term financing.

Now, there is a great deal of that that has been done. As a result of all this policy of expansion, the roads find themselves, to-day, with a much bigger transportation machine than today's traffic needs. They have got a surplus of facilities.

Now, you may say they have unwisely expended their money in making the improvements to their properties, that they ought to have laid it up in the banks for this rainy day. You know, hind-sight is much better than foresight. The railroads were doing just what industry did. Factories all over the country enlarged their plants. They ploughed their earnings back into enlarged facilities; farmers enlarged their farms. They bought more land, and it was generally done. Why, we all thought that you could not go wrong in buying America. Everybody thought we were going into a permanent era of prosperity—that is, nearly everybody—and, they did the same thing.

Conservative business men enlarged their manufacturing facilities and spent their money that way, so that if we condemn the railroads for having spent their money in building up their plants, we have to condemn ourselves.

Mr. HUDDLESTON. Private industry is being forced to take their losses.

Mr. FULBRIGHT. And so are the railroads.

Mr. HUDDLESTON. Well, are they?

Mr. FULBRIGHT. In the first place, while they are taking their losses, Mr. Huddleston, I think I can say—

Mr. HUDDLESTON. The farmer, who bought, at a high price, more land than he had any use for, has lost it.

Mr. FULBRIGHT. Well, are not the railroads taking a loss if they fail to make a return on their investment for the next 5 or 10 years?

Mr. HUDDLESTON. But they are wanting the Government to come to their rescue.

Mr. FULBRIGHT. Yes; they came up here and wanted a 15 per cent increase last summer, but they did not get it.

Mr. HUDDLESTON. They got an increase all right.

Mr. FULBRIGHT. They got a surcharge there, yes, but the point I am making is that they do not get the return.

Mr. HUDDLESTON. You called attention to the vast expansion of terminal facilities. I think that everybody knows that there has been an enormous expansion of that kind that was wholly unnecessary and that sound judgment would not have dictated.

The issue is, shall the public now pay for it?

Mr. FULBRIGHT. I am not advocating the public now paying for it. I do not think they should. But, Mr. Huddleston, we have got to judge that by what will ultimately be necessary, by reason of conditions and needs that exist in the future.

Mr. HUDDLESTON. They may or may not be needed in the future, depending upon whether business expands, or what happens. Nobody knows.

Mr. FULBRIGHT. I think that what the New York Central is spending in Buffalo will prove wise.

Mr. HUDDLESTON. When we go into a number of cities we find new and magnificent passenger terminals that serve no practical purpose and which merely appeal to the sense of beauty and power, and that sort of thing; but they represent an improvident investment, I think.

Mr. FULBRIGHT. Mr. Huddleston, I find myself agreeing with you on a lot of things. I think that is correct, that they have built a lot of fine passenger stations, for a traffic that looks like it is gone, most of it.

Mr. HUDDLESTON. Frequently they were not built with a practical object in view; they were built for show.

Mr. FULBRIGHT. I think that you can take a total of that over the country and you will find that it does not amount to a great deal. I know that I went into that somewhat on one of our general rate cases. I thought that I had something, but when I undertook to total it up, it was so small in the total, that it got lost.

Then, of course, to some extent, I think that the railway passenger terminal ought to be an attractive place to the public. I think it ought to be something that will be in keeping with civic improvements of the town.

I think that they have overdone it in a lot of cases, just like you do, but when you take the total of that, I have been surprised at how little it totals up. I could not make much of a case out of it.

You will find that the railroads have made mistakes, just like everybody has made mistakes, but on the whole they have certainly



spent a great deal of money in additional facilities, which, while they are not needed, to-day, we believe will ultimately be needed.

Mr. HUDDLESTON. I notice that you have 15 minutes left before adjournment time, and I assume it is not your purpose to take up another day.

Mr. FULBRIGHT. I hope not.

Mr. HUDDLESTON. I want to direct attention to some specific matters here, apart from this very general discussion we have been having. I want to call your attention to a provision of section 1, of the interstate commerce act:

All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Is there anything wrong with that rule of rate making?

Mr. FULBRIGHT. I think it is absolutely right.

Mr. HUDDLESTON. Is anything in addition to that required?

Mr. FULBRIGHT. If we were not in this condition, I have been describing to-day, I would say, to-day—

Mr. HUDDLESTON. We are passing a law for general application.

Mr. FULBRIGHT. Yes, sir.

Mr. HUDDLESTON. Wherein does any kind of condition at any time justify anything in addition to this?

Mr. FULBRIGHT. Mr. Huddleston, we can not get away from the real effect, the real existence of public psychology. The railroads to-day are not nearly so bad off as this investment record would indicate. It is largely a matter of psychology and to just simply repeal the whole law, why, wipe it out from the beginning, if everything were going along nicely and all, I would say that it would be all right to do that, but to-day I really believe that there ought to be left in that section something so that the public will not feel that Congress had abandoned them, so to speak, but that Congress still has the opinion that there shall be consideration given to maintaining, at least under normal conditions, free movement of traffic.

Mr. HUDDLESTON. All of those things are considered by the Commission, and have been passed upon in many cases in deciding what is a just and reasonable rate.

Mr. FULBRIGHT. Oh, yes, sir; and they will continue to be, if you repealed the whole thing, so far as that is concerned.

Mr. HUDDLESTON. Now, it is your idea that we should go out and do something more, or pretend that we are doing something more, so as to satisfy an unintelligent public psychology and I say "unintelligent" only because of your description that it requires mere words and gestures, and it is not satisfied merely with sound reasons.

Mr. FULBRIGHT. I think that Congress has frequently confronted that same situation and has had to deal with it.

Mr. HUDDLESTON. Congress, of course, is confessedly unintelligent.

Mr. FULBRIGHT. I do not mean that, but I mean that you have confronted situations where you have had to deal with that.

Mr. HUDDLESTON. What you are trying to get us to do, it seems to me, is to try to speak to a public psychology that we are to assume is suffering from an inferiority complex. Do you not think that

we can trust the public to know their rights and have a reasonable amount of sense? My own thought about it, let me say, is that the public are not unintelligent, but they have got plenty of intelligence, and do not need gestures and posturing in order to be reached and if the public knows, and the public does know, so far as the public is interested in this matter, that just and reasonable rates require that all of these factors shall be considered, then what is the necessity for anything more?

Mr. FULBRIGHT. Well, I believe that the investing public, I would not say is exactly unintelligent, but are not versed in the intricacies of rate making and rate structures. Now, they have felt, and are wrong, I think, that the commission has just starved the railroads for the last 10 years.

Mr. HUDDLESTON. You want us to satisfy that kind of sentiment?

Mr. FULBRIGHT. I want Congress to show, in its act, by repealing this section 15a, that it means to say that it is not ignoring the fact that investors' rights should be considered by the commission.

Mr. HUDDLESTON. Would it be possible for anyone familiar with the decisions of the Interstate Commerce Commission to reach any such conclusion?

Mr. FULBRIGHT. Well, they argue that if you reduce the ton-mile earnings, you are reducing the net revenue of the carriers, and they point to the reduction in the ton-mile earnings, and say that shows the commission is starving the railroads.

I wish that I could take the time to get into that subject as thoroughly as I would like with you, but I may say—

Mr. HUDDLESTON. I am particularly interested to know just what office section 15a performs. What is the purpose and effect of it, in addition to allowing the rates, such as described by section 1, to be fixed? Apart from the recapture features?

Mr. FULBRIGHT. I think that the effect of it—I have tried to describe here—has been to disappoint both the shippers and the investors.

Mr. Eastman said that the rate structure probably would not have been very different if we had not had it. Of course, that is hard to speculate upon. Probably in 1927 rates could have been generally increased, outside of perhaps agricultural commodities and on one or two other lines, and yet in 1931, instead of increasing, it looks like the only thing to be done would be to reduce them.

Now, we had a law that in theory, and in its present condition, is against that, discouraged that, and I think in getting away from it, I think it is very proper to make a law leaving some guide, some general guide there, not as exclusive in naming all of the elements to be considered, but some general guide that indicates the policy of Congress. I think that should be done.

Mr. HUDDLESTON. Is it your idea that these clauses of this bill, H. R. 7117, 1, 2, and 3, would authorize the fixing of a higher rate than would be authorized merely by this clause of section 1 that I referred to?

Mr. FULBRIGHT. No, sir; I do not think so.

Mr. HUDDLESTON. You are endeavoring then solely to deal with a psychological situation?

Mr. FULBRIGHT. I do not think it can be ignored.

Mr. HUDDLESTON. Am I correct in saying that is your sole purpose in advocating it?

Mr. FULBRIGHT. I would say now, speaking from the standpoint of the shippers, that would be our purpose; that would be it. I believe I am correct in that.

Mr. HUDDLESTON. In other words, to cause the investors to feel that Congress was more friendly toward the carriers than would be the feeling if we merely leave the law in exactly the same shape, with the other words in it?

Mr. FULBRIGHT. No, sir; because clause 3 says that they should give consideration to the necessity in the public interest that the carriers furnish transportation at the lowest rates consistent with adequate service and this clause that I suggested that they should give consideration to the maintenance of rates and charges under which a free movement of commerce may be fostered and preserved. We do not want to ignore that.

Mr. HUDDLESTON. What does that mean, in addition to "just and reasonable rates"?

Mr. FULBRIGHT. Well, it means what I have thought that the Hoch-Smith resolution meant.

Mr. HUDDLESTON. In other words, you want to address the psychology of the investor and then you want to turn the other way and address the psychology of the shipper?

Mr. FULBRIGHT. I do not imagine that would be one side that I would want to ignore entirely.

Mr. HUDDLESTON. It occurs to me then that St. Elizabeths might be a good place to deal with both of those interests. [Laughter.]

Mr. FULBRIGHT. Well, they are both things that have to be taken into consideration, I think. I think we are agreed on that.

While I am on that subject, Mr. Huddleston, I would like for the members of the committee to notice the last sentence on page 2 of 7117. Mr. Burtress called my attention to the interpretation of that sentence which I did not think was intended by Mr. Eastman, and Mr. Eastman, upon inquiry, stated it was not.

That sentence may be interpreted as declaring that rates shall be kept upon one level all of the time.

Now, it was not the purpose of the author to do so. I have here a sentence that I would like to read into the record, and I can have copies of this made and furnished to the committee. Instead of the sentence as written there, I have this to offer:

It is declared to be the duty of the commission in the exercise of its sound discretion, to so adjust the general level of rates from time to time as to produce, as nearly as may be, over a reasonable period of years, revenues consistent with the standard herein set forth: *Provided*, That nothing herein shall be construed to require the commission to increase the level of rates in times of economic depression or to decrease the same during times of economic prosperity.

I submitted that to Commissioner Eastman, by the way, and he said, offhand, it seemed to him to be carrying out the thought. If he wants to present anything further to the committee on it, of course, he can do so.

I would have liked to have gotten one other subject that I wanted to discuss before I get through, and the time is almost up, but I

want to go into the question of the rate level. A question that has been asked here by some of the members of the committee, that is, whether or not the rate level was unreasonable under which these recapture provisions have accumulated.

Upon the whole the rate level, I think, has been considered as just and reasonable. There are always particular rates and particular commodities which are not satisfactory to any of those involved. The way these recapture claims have developed the question arises as to whether or not there is a class of railroads that are in this recapture class, because they have charged unreasonably high rates.

Commissioner Eastman mentioned two of those classes the other day. There is a third class that he did not mention, and that is the terminal railways. I will use as an illustration the Terminal Railway Association of St. Louis. That is a railway terminal company that is owned by all of the lines that enter St. Louis. Each has an interest in it. It is a great economy in that they do not have to duplicate any facilities. It has accumulated in the course of these years quite a little bit of earnings. Now, the lines that own it, practically none of them, have earned the fair return, if you take the period as a whole. There are no recapture claims against them. But, against that terminal railway association there is over \$8,500,000 being claimed as recapturable.

Now, the terminal railway association has simply acted as an agent in handling the shipments for those trunk lines. The general public rate structure was not affected by what it did. What its earnings were should have gone right into the coffers directly of all of the tenant lines that were interested in it. Much to my surprise there is over \$40,000,000 of claims against these terminal railways that are just simply agencies.

Now, so far as the rate level is concerned, the public has been able to get, perhaps, lower rates because of the practice of the railroads to construct these terminal facilities, because it shifts this enormous use of duplication of facilities which would provide investment on which they could claim returns.

The CHAIRMAN. Mr. Fulbright, our hour to close has arrived, and we have promised, to-morrow, to hear some other gentlemen, who have been waiting here. If you can not answer the questions that have been asked you and complete your remarks in the record of what you want to say, of course, we will have to have you come back some other day, but there is one other gentleman in the room who has been waiting here since last week for 20 minutes, and then we have the State commissioners here, and their representatives, and I have told them that they could go on to-morrow. I told them that last Friday.

Mr. FULBRIGHT. That is all right. I have perhaps 15 minutes more, and I will put myself at the disposal of the committee.

The CHAIRMAN. I thought probably, in connection with the questions that have been asked you, that you might get in that part, or you could put it in the record at the end of your remarks.

Mr. FULBRIGHT. Perhaps I would have an opportunity before the committee closes the subject.

The CHAIRMAN. We are going to try to close the hearings on this bill next week, because we have got a great many other matters

that we have to go into at an early date. At least, for the present, we have to go on.

Mr. FULBRIGHT. I have only about 15 minutes more. Of course, the questions that are asked me drag out that time a little more.

The CHAIRMAN. To-morrow, we will go on with the State commissioners, at 10 o'clock.

(Thereupon, at 11.47 o'clock a. m., the committee adjourned to meet the following morning, Wednesday, January 27, 1932, at 10 o'clock a. m.)

## RAILROAD LEGISLATION

WEDNESDAY, JANUARY 27, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., Hon. Sam Rayburn (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Mr. A. L. Holton, vice president Intrastate Railroad Co., was to have been here this morning. He was not here. He was supposed to have 20 minutes this morning, but he is not here. We will therefore hear Mr. Benton.

### STATEMENT OF JOHN E. BENTON, SOLICITOR OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITY COMMISSIONERS, WASHINGTON, D. C.

The CHAIRMAN. Will you qualify, Mr. Benton, so that the committee can hear you.

Mr. BENTON. My name is John E. Benton. I am the general solicitor of the National Association of Railroad and Utilities Commissioners. My office is in the Otis Building at 810 Eighteenth Street, NW., Washington, D. C. I have been directly or indirectly engaged in regulatory work since 1911. In that year I was appointed to the public service commission of New Hampshire, upon which I served for four years. Thereafter I was general solicitor of the bureau of valuation of the Interstate Commerce Commission, which place I resigned upon become general solicitor of the National Association of Railroad and Utilities Commissioners, in December, 1919, and I have held that place since.

That association was organized in 1889, at the instance of Judge Cooley, then chairman of the Interstate Commerce Commission. He called the first meeting of the commissioners, and was the first president of the association. It comprises within its membership all of the members of the State regulatory commissions of the United States. The members of the Interstate Commerce Commission are also members of the association.

The association is, however, primarily an agency of the State commissions, and is maintained by them. It is the agency through which the State commissions ordinarily make recommendations to the Congress touching upon proposed legislation. In determining the position which the association should take, upon such legislation, it is not customary for the members of the Interstate Commerce



Commission to take any part. Accordingly, what I shall say here to-day is to be understood as said purely on behalf of the State commission membership of the association.

The affairs of the association, Mr. Chairman, are administered through the medium of annual conventions at which matters of interest to the State commissions generally and to the public as to matters with which the State commissions deal, are considered. The association elects officers and has standing committees. Matters relating to legislation are committed under general resolutions to our committee on legislation. That committee has been in session in the city of Washington, this week, and the chairman of the committee is here.

If I may, Mr. Chairman, I want to present Hon. Andrew R. MacDonald, of the Public Service Commission of Wisconsin, who is chairman of that committee, who will make a statement preceding my own.

#### STATEMENT OF ANDREW MACDONALD, OF THE WISCONSIN PUBLIC SERVICE COMMISSION

The CHAIRMAN. All right, Mr. McDonald.

Mr. MACDONALD. There is no statement to make on my part, Mr. Chairman.

The CHAIRMAN. I wish that you would qualify, Mr. MacDonald. Give the reporter your name, and tell us what position you hold.

Mr. MACDONALD. I happen to be chairman of the legislative committee of the National Association of Railroad and Utilities Commissioners. Andrew MacDonald, of the Wisconsin Public Service Commission.

You called on Mr. Benton first. Mr. Benton started out to make the explanation I would make, so there is nothing for me to say. Mr. Benton is general solicitor of the association and authorized to speak for the association.

I have read Mr. Benton's statement, and agree with the statement he is about to make. It was presented to the committee and approved by it.

#### STATEMENT OF JOHN E. BENTON—Resumed

Mr. BENTON. I thought it proper, Mr. Chairman, to make it clear that this statement was made on behalf of the State commission membership of the association, as distinguished from the entire membership, which includes the Interstate Commerce Commissioners, although it will appear from what I say that the association comes here to support in the main, the recommendations for revision of section 15a, which have been made by the Interstate Commerce Commission. It would, perhaps, be more accurate to say that the Interstate Commerce Commission recommends now, legislation which the State commissions long urged upon Congress, in fact, ever since the transportation act was passed.

When the transportation act was under consideration in the Congress, the national association, representing the State commissioners, appeared and protested against those provisions of section 15a which have been under discussion here since the opening of the hearings. I want to read briefly from the statement then made on behalf of the

association by Hon. Charles E. Elmquist, who was my predecessor as general solicitor, on October 28, 1919, at a hearing on H. R. 4378, which became the transportation act.

Mr. Elmquist, in a discussion of this particular part of the proposed legislation, in the course of his discussion, stated:

A number of plans which have been submitted here call for a guaranty of railroad return by a rule of rate making, which imposes upon the commissions the duty of prescribing rates which will establish a sure return upon properties within a given region, a division of excess profits and a Government fund to serve as a shock absorber for the protection of the weak lines, and a certain return upon the investment account of railroads with certain classification territories.

I do not know of any regulating commission, State or Federal, who believes that the Government should guarantee the return of carriers. I have talked with many members of the State commissions and asked them how they could prepare rates which would result in guaranteeing a return to the carriers within their own States. It seems to be the general opinion that a guaranty is impossible of fulfillment, because none of us can foretell the operating conditions, the movement, kind or volume of freight, the climatic conditions, or whether in one section of the country there will be a large crop and a complete or partial failure in another section. Economic factors play a large part in every rate controversy. Practical considerations must address themselves to the intelligence and judgment of a regulating tribunal at the time the rate question is presented. We also fear that any attempt by the Government to guarantee the return of the carriers would result in inefficiency of operation, extravagance in the conduct of the officers and employees who control these companies, and would result in constantly increasing operating costs, and generally mounting transportation charges which would add to the burden of the American people.

I have read that, because very concisely, Mr. Elmquist then pointed out the very difficulties and bad results which would arise from the enactment of the section then proposed, which have been encountered as shown to you by Commissioner Eastman's statement last week.

However, notwithstanding the fact that those views found approval by this committee, which at first reported adversely on 15a, as Commissioner Eastman recalled to you, the exigencies of the situation then existing finally induced the House to accept the section as it passed the Senate, and it became a law, in 1920.

In 1921, after observing the operations of the transportation act, and particularly that section known as section 15a, the State commissioners in their annual convention passed a formal resolution declaring that the rate-making plan embraced in section 15a was "uneconomic and unsound" and recommended the immediate repeal of that section.

They did not stop with that, as some members of this committee then serving will remember. Bills were drawn to provide for the outright repeal of section 15a, which were introduced in this House as the Sweet bill, and in the Senate as the Capper bill.

The Sweet bill was H. R. 6861, and the Capper bill was S. 1150. Extended hearings were held before this committee, in which representatives of the State commissioners appeared, and stated at length the criticisms which lay against the section. However, without entering into the reasons for it, the amendatory legislation was not enacted. However, the claim that the rate-making plan was "uneconomic and unsound" then urged upon Congress, and the position then taken by the association, has been ever since maintained. This matter has been considered by the State commissioners in several annual conventions, and no less than seven times formal

resolutions have been passed memorializing Congress to repeal section 15a in toto.

The association has never considered section 15a without declaring the same to be unsound and uneconomic, or without asking Congress to repeal the same outright.

Action was last taken by the association with reference to this section at its annual convention in November, 1930. The matter was at that time very fully considered and a resolution adopted which dealt with all the matters which are covered by these two bills now pending before the committee which have been introduced by Chairman Rayburn. Because of the thoroughness of the consideration, I think it well to state somewhat fully how the matter then came to be taken up, and the extent to which it was considered.

There was then pending before Congress Senate bill 4005, which was commonly called the Howell bill, which proposed a revision of section 15a and certain other amendments of the interstate Commerce act.

Mr. MAPES. Unless you give the Congress, it will be difficult to locate the bill.

Mr. BENTON. That was the last Congress. The bills which I first mentioned were in the Congress which was in session in 1921. The Senate hearings were held beginning September 26, 1921.

Mr. PARKER. Does that say what session?

Mr. MILLIGAN. First session of Sixty-seventh Congress.

Mr. BENTON. I have given the numbers of the bills and it was the Sixty-seventh Congress. I can not give you the date of the Senate hearing.

The House hearings began May 23.

Mr. MAPES. I think that that is sufficient, if you will just give the numbers and the sessions.

Mr. BENTON. I have given the numbers of the bills, and the Sixty-seventh Congress.

The Howell bill was introduced at the last session of Congress. That bill, in certain respects, was closely similar to H. R. 7116. In other respects it was radically different. It was similar in the provisions for a rate base representing not aggregate value, but aggregate investment, built, however, upon the first valuations made by the Interstate Commerce Commission under section 19a. Like H. R. 7116 and also H. R. 7117, it made provisions to relieve the Interstate Commerce Commission from the duty to make recurrent valuations of carrier properties from time to time in the manner prescribed by section 19a; also it contained provisions to relieve the commission from the duty of making 19a valuations in consolidation proceedings. It also eliminated the "aggregate-return-on-aggregate-value" rate-making rule of section 15a, but substituted an "aggregate-return-on-aggregate-investment" rule.

It differed radically from H. R. 7116, in that it would retain recapture, not only for the past, but for the future, and it would have devoted the proceeds of recapture, as Commissioner Eastman pointed out to you, to investment in additions and betterments of the roads earnings in excess, and would in effect have made those public property, which would not thereafter enter into the rate base.

In the early part of June, 1930, Senator Couzens, chairman of the Senate Committee on Interstate Commerce, sent a copy of the Howell bill to me as general solicitor of the National Association of Railroad and Utilities Commissioners, requesting an expression of views on behalf of the association with relation to its provisions.

On June 12, 1930, I advised the State commissions, all of them, of this request, in a bulletin in which I discussed the bill at some length, and at the same time I sent a copy of it to each commission, and a copy of the recommendations which the Interstate Commerce Commission had made with respect to that bill to the Senate committee. I have here a copy of the bulletin which I will be glad to file with the committee, if it cares to have me do so. In it I said:

I consider that the bill is of more than ordinary importance for the following reasons: (1) It deals with a subject matter upon which legislation as some time appears to be inevitable; (2) it has received in substance the approval of the Interstate Commerce Commission—unanimous except for the dissent of Commissioner Woodlock; (3) it deals with section 15a, repeal of which this association has several times recommended by resolutions; (4) it deals with the provisions of law providing for recapture of excess earnings of railroads, which at the end of 10 years after their enactment are unenforced, and the enforcement of which would be accomplished by difficulties and consequences which apparently lead the Interstate Commerce Commission to doubt the wisdom of their retention in the law.

These matters deserve the careful consideration of the best minds in the association, irrespective of committee membership. I am also especially calling the matter to the attention of the president of the association, and to the chairman of our executive, legislative, and valuation committees. I am having the Howell bill reproduced, and will shortly send a copy of the same in full to each commission. I have also asked the Interstate Commerce Commission to send a copy of its recommendations concerning that bill, a mimeographed document of approximately 50 pages, including the dissent of Commissioner Woodlock, and an appendix to the majority report, to each commission. In this bulletin I will confine myself to a brief statement about the bill.

I will skip that; then continuing I said:

There are other details of the bill which it is unnecessary to mention here. What I have said is sufficient to show that it deals with matters of great moment. The Interstate Commerce Commission has given to the Senate committee an extended and carefully considered opinion. Any expression from this association ought to receive like careful consideration.

Mr. MILLIGAN. Mr. Benton, what bill are you talking about?

Mr. BENTON. I am talking about the Howell bill, which in its rate base provision and in the provisions for the repeal of that part of section 19a, which requires recurrent revaluations in the same manner as first made and of the provisions which require 19a valuations in consolidation cases is the same, or substantially the same, as H. R. 7116, which is now before this committee.

A joint meeting of our valuation, legislative, and executive committees for consideration of the bill, and of Senator Couzen's request, was held at Chicago on July 29, 1930. The committees were in session throughout the day, with a brief adjournment for lunch. After discussion of the provisions of the bill, and in particular of the rate base and recapture provisions, the following resolution was adopted:

*Resolved*, That it is the view of the committee members here present, that no committee or committees, not expressly thereunto authorized by the association, should attempt to state the position of the association upon the important questions of public policy presented by S. 4005, and the so-called Howell bill; but that in accordance with long established policy, the position of the

association should be expressed by the association itself, through action of its membership, taken after full opportunity for consideration at its annual convention.

The committees thereupon voted to instruct the general solicitor and the assistant general solicitor of the association to prepare an analysis and discussion of the bill, and to distribute copies thereof to the several commissions in advance of the next convention of the association; and also to prepare resolutions for committee consideration, and for presentation in such form as should be approved, to the convention.

In conformity with these directions, an analysis of the bill, and a discussion thereof, were prepared, and incorporated into a bulletin which was sent to each commission on September 15, 1930. With that bulletin I sent to each commission a second copy of the Howell bill.

I have here a copy of the bulletin, which I shall file with the committee. I will quote from the discussion therein, so far as that discussion is applicable to and relates to matters contained in the bills now before the committee.

In that bulletin, I said:

In our Bulletin No. 98-1930, referring to the Howell bill, we said that it dealt with a subject matter upon which legislation at some time appeared to be inevitable. We further said that revaluation of the railroads of the United States "from time to time" and "in like manner" as originally valued under section 19a "is physically impossible—or at least so expensive and time consuming that it will never be done." We reiterate these opinions.

We believe the bill presents to Congress a subject matter which will be before Congress until legislation in some form is enacted. Such legislation may not be—and indeed probably will not be—enacted at the next session of Congress—

That was at the session which is now passed.

but it seems by no means unlikely that the hearings which will be held during the next session upon the Howell bill may be the basis for legislation which will be thereafter enacted.

Let me say that those hearings which I anticipated would be held on the Howell bill never were held, but the pendency of the bill gave occasion to state the position of the association, nevertheless, and resulted in the resolution which I am about to read.

Mr. MAPES. Will it interrupt you, Mr. Benton, if I ask you to repeat that last, to which you referred, the valuation section of the law?

Mr. BENTON. We said "that the revaluation of the railroads of the United States, 'from time to time'—that is quoted from the valuation act," and 'in like manner' as originally valued under section 19a is physically impossible—or at least so expensive and time consuming that it will never be done."

Proceeding with what was said:

Whenever those hearings are held, this association will doubtless desire to present its views; and if it does not favor the bill as drawn, to indicate what legislation, if any it believes ought to be enacted.

It appears to us that the principal questions presented to the association by the Howell bill are these:

(a) Does the association favor such amendment of existing law as will relieve the Interstate Commerce Commission of the duty of revaluing the railroads of the United States "from time to

time" and "in like manner" as such roads were first valued under section 19a?

Upon this question the association has never heretofore declared itself. Actual experience, however, has proved that the original plan of the valuation act can not be carried out. That plan was to make valuations of all the railroads of the country, and thereafter to keep those valuations constantly current, so as to be available for use at any time.

When section 19a was originally enacted the immensity of the task of the railroad valuation was not understood. The idea doubtless was that when the commission had once made the original valuations it would be a comparatively simple task to keep them current by revisions "from time to time." It is, however, now 17 years since the valuation act was passed.

It is now 19 years—

The primary valuation is not yet ended, and little has been done toward bringing valuations down to date. To make them current "in like manner" will require new inventories showing all physical property owned as of any new valuation date, with reproduction cost and accrued depreciation determined as of that date. It will likewise require reappraisal of lands as of that date. It is physically impossible to make revaluations in the manner prescribed in section 19a and to complete the task as of any selected date until many years after that date. If the law is continued unchanged, and complied with, it will require a large valuation force constantly at work, and the commission will never have a current completed valuation of all roads.

The question, therefore, appears to be whether the revaluation provisions of the valuation act shall be retained, and the commission shall always be devoting its attention, and spending large sums of public money, in valuation work, without ever being able to secure what the act originally aimed at—the current value of the carrier properties of the country.

It is to be remembered that the values which the commission has fixed, and is fixing in its original valuations under section 19a, are based substantially on reproduction cost prices as of 1914, except as to lands, which have been valued on the basis of prices current at valuation dates. This is true alike of the prosperous and the unprosperous roads.

And I will interject that those valuation dates vary from 1914 to 1920.

It is also to be kept in mind that whatever date may at any time be chosen for a revaluation date it will be many years after that date before the new values will be completed and available for use.

Let me interject here, the commission has already fixed a date for revaluation and is working upon a revaluation. The revaluation date is December 31, 1927, and it is as of that date, that some time in the future, perhaps, in 1940 or 1945, or in 1950, if the law continues unchanged and the Congress continues to make appropriations, that you will know the values fixed as of 1927.

It is a serious question whether any public good will be served by periodic revaluations which attempt to reflect into adjudicated values the reproduction cost prices which from time to time prevail, at dates selected for valuations, but which will not be the prices in effect when the new valuations are finally concluded.

In some respects the situation is vastly different to-day from what it was when the valuation act was passed. Then railroad values were being used in a very considerable number of confiscation rate cases in court. To-day confiscation rate cases, involving railroad rates, do not arise. The claims of carriers that their rates are inadequate are adjudicated instead before the Interstate Commerce Commission, either under section 1 or under section 13.

They are adjudicated by the Interstate Commerce Commission under section 1, if they relate to interstate rates, and under section 13, if they relate to intrastate rates, and confiscation cases, involving railroad rates, are substantially unknown in the courts to-day.



In that respect, the situation is diametrically opposed to what it was when the Congress provided for valuation of the railroads in 1914.

The principal use of railroad values to-day, in rate regulation, is for the information of the Interstate Commerce Commission in the fixing of general rate levels affecting many carriers. In such cases it is impossible to adjust rates so that they will produce a particular, predetermined percentage of return upon any given amount. Too much depends upon economic conditions over which the commission has no control. And in any event, under decisions of the United States Supreme Court, values long before determined require adjustment in the light of existing price levels. Even if we retain the present law unchanged, the task of revaluation is so great that it will never be possible to obtain a current valuation of all of the railroads of the country. Adjustment will always be necessary in the use of any valuations the commission may have made.

The provisions of the law which require the carriers to supply to the commission any information which the commission may require in the administration of the interstate commerce act would, of course, remain unaffected by a repeal of said paragraph (f), requiring revaluations "from time to time" and the carriers would continue to file reports showing property additions and retirements, and the net change in investment cost thereof; and the commission could compile and keep the same always available for use.

That is true either under H. R. 7116 or H. R. 7117. The repeal of the requirement that the commission is required to value these properties "from time to time" is not to affect the power and the duty of the commission to keep informed as to railroad properties, and to keep account of the investment that is made in additions and betterments, subsequent to their 19a valuations.

When the valuation act was originally passed there were no existing inventories of carrier properties and no complete available data as to carrier investments. These the commission now has. Investment data as to years prior to valuation it has as fully as it could compile the same in pursuance of the requirements of section 19a and as to years subsequent to valuation, as shown by sworn returns of carriers in response to account orders of the commission.

The power to require these returns would continue in the commissioner under either one of the acts before you.

If such information as to physical properties and as to investments had been available to the commission in 1913, few would have urged the passage of the valuation act. With such information now available, it may well be questioned whether any good purpose will be served by attempting to make another valuation upon the basis of reproduction costs now current, especially in view of the fact that we appear to have entered upon an era of rapidly changing commodity prices, which may seriously affect reproduction costs before it will be possible to complete a revaluation.

I might interject that what I had in mind in making that observation, when this bulletin was sent out on September 15, 1930, was this: The commission was then engaged, as it continues to be, in the preliminary work of making a second valuation of railroad properties under section 19a. While the completion of its first valuations is still a long way off, yet the making of valuations is such a long task that the commission has felt that it should be assembling data for correcting the first valuations when they are completed, to make them more nearly current.

In its report to Congress, December 1, 1928, the commission stated that by orders issued June 12, 1928, it had fixed December 31, 1927, as the date for the second valuation. When the second valuation is completed, accordingly, it will reflect the prices which prevailed in 1927 rather than the low prices of to-day or the prices which may prevail when the second valuation is finished, whenever that may be.

When the bulletin from which I have just been reading was sent out we had entered upon the decline in price levels which still continues. Nobody knows where prices will stabilize. It was this consideration which led me to express doubt as to whether any good purpose would be served by spending large sums of public money to enable the commission at some subsequent time to announce the values of railroads at the high prices which prevailed in 1927, and I should entertain the same doubt as to the usefulness of a valuation made as of a date when extremely low prices might prevail. The point is that reproduction costs fluctuate and that any valuation made by the commission requires such a long period of time in making that it is obsolete in fact and in law before it can be completed.

From the public point of view there is a very real objection to the promulgation of railroad valuations established through the use of prices distinctly higher than those which are current, because when promulgated they will be pressed upon the commission as constituting the base upon which carriers are entitled to earn a fair return either under section 15a or under the Constitution. In the same way a valuation made as of a time of extreme depression would not be fair to the carriers. To proceed with the discussion which I was reading, the next questions presented for consideration of the commission were these:

(b) Does the association favor relieving the Interstate Commerce Commission from the duty of finding the aggregate value of all railroad properties from time to time, and of adjusting rates to yield a fair annual aggregate return upon such aggregate value, as now provided in section 15a?

(c) Does the association favor the repeal or modification of the recapture provisions now contained in section 15a?

Upon the questions the association has in effect repeatedly declared itself. The annual convention of the association at Atlanta in 1921 declared it to be the sense of the association that the rate-making plan prescribed by section 15a was "uneconomic and unsound," and asked the "immediate repeal of said section 15a." This resolution was, in substance, adopted at Detroit in 1922, at Miami in 1923, at Phoenix in 1924, at Washington in 1925, and at Asheville in 1926.

The association has never considered section 15a without declaring the section "economically unsound" and asking Congress to repeal the same.

Accordingly, unless the association now entertains different views with respect to section 15a from those which it has heretofore repeatedly expressed, it would favor a repeal of the statutory rule of rate making, which would attempt to require a fixed aggregate return upon an ascertained aggregate value of all roads, both the prosperous and the unprosperous, regardless of economic conditions. With the repeal of this statutory rule would also go the recapture provisions of section 15a, which were incorporated in the section because Congress recognized that the operation of the aggregate-return-on-aggregate-value rule, as paragraph (5) of the section itself declares, would give to some carriers a net operation income "substantially and unreasonably in excess of a fair return upon the fair value of their railway property."

(d) If the association favors a repeal of the aggregate-return-on-aggregate-value rule, and a repeal of the recapture provisions now contained in section 15a, does it favor the enactment of the Howell bill for the establishment of such repeal?

Most of the discussion I omit reading. It will be in the bulletin which I will file with the committee. I will read a part of it, which refers to provisions similar to those contained in either of the two bills which are here.

What are the undesirable features of the bill? Many members of the association will particularly oppose the bill because it will operate to give to the

Government a partial ownership of those railroads which earn recapturable excess.

Mr. BULWINKLE. Which bill are you discussing?

Mr. BENTON. The bill I sent out, and I am now proceeding to read parts of the bulletin.

Mr. BULWINKLE. Is that in reference to the same Howell bill you have referred to a while ago?

Mr. BENTON. Yes, sir; it is.

We believe, however, that the major objection which members of the association will find to the Howell bill is that it does not remove the principal vices of section 15a.

Mr. MILLIGAN. The Howell bill is not being considered by this committee, and I think that anything you refer to should refer to the bills that the committee has before it.

Mr. BENTON. Of course, that is true, Mr. Congressman. I have pointed out that I am giving consideration to those parts of the Howell bill which are similar to the bills which are before you and incorporated in H. R. 1716.

Mr. MILLIGAN. Why not discuss the bills before the committee?

Mr. BENTON. What I am reading does. I think you will perceive the application of it, if I am permitted to read it. The provisions of H. R. 7116 are identical, so far as a rate base is concerned, with sections which the Howell bill contained. So what I say here absolutely relates to the principle of an aggregate rate basis upon which the commission is directed to produce a fair return. That is what is proposed in H. R. 7116.

Mr. SHALLENBERGER. Mr. Benton, I have read and also listened to what you have said with reference to the declarations of your association, which you represent, against this section 15a, and you recommend its repeal. Does the act before us carry out your recommendations for the repeal of section 15a?

Mr. BENTON. This act repeals both the rate making rule and the recapture provision.

Mr. SHALLENBERGER. It just modifies it; isn't that all?

Mr. BENTON. No, I think not, Governor Shallenbarger. I am coming to that. It does repeal; either one of these bills repeals the section, those provisions of the section at which our protests have been aimed. H. R. 7116, however, puts back again into 15a a rate-base provision which is open to much the same objections that the present section is open to.

H. R. 7117 also would put into the revised section 15a directions which we consider objectionable.

Mr. SHALLENBERGER. After all, it only modifies and does not repeal the section. Do you think this act repeals the recapture clause?

Mr. BENTON. It does not use the word "repeal," but if you pass either one of these acts, those things which we have protested against will be out of section 15a and something else in.

Mr. SHALLENBERGER. Recapture clause will be out?

Mr. BENTON. Yes.

Mr. SHALLENBERGER. Now, is your objection that you have to 19a because these roads—

Mr. BENTON. 15a?

Mr. SHALLENBERGER. I mean 19a.

Mr. BENTON. Either H. R. 7116 or 7117 would provide for relieving the commission from the duty to make revaluations of all of the railroads of the country "from time to time" in the way now required under 19a.

Mr. SHALLENBERGER. You think that the act we are considering would carry out your recommendations as to 19a?

Mr. BENTON. They do.

Mr. SHALLENBERGER. Section 19a requires the commission to revalue these railroads as to a basis of rate making? Do you think that is eliminated in the act we are considering?

Mr. BENTON. That leaves the commission under the duty to complete the first valuation, in which it is using the 1914 prices. It leaves the commission the duty to keep informed as to changes in railroad property, and as to the net costs of additions and betterments. It relieves it from the duty of making inventories and appraisals of railway property showing reproduction cost from time to time hereafter.

Mr. SHALLENBERGER. What I meant was does the act before us leave the law fundamentally as it is? Will the commission take the valuation which they have determined under the law as the basis for rate making?

Mr. BENTON. No; they would not be required to do that.

Mr. SHALLENBERGER. It does not relieve them of that duty?

Mr. BENTON. I am talking about 19a, with respect to H. R. 7117.

The provisions of H. R. 7116 do compel them to take the values found under 19a plus addition of investments made as an aggregate rate base—taking all the roads together. The requirement to consider value in rate making, however, rests primarily in the Constitution, and for individual roads will always exist, regardless of the statute.

What I point out is that this will relieve the commission from the duty to go ahead and make another valuation of the railroads of the country at 1927 prices, which will be pointed to in every general rate case as affording a basis upon which the commission must, under the Constitution, provide a return.

If I may I will proceed to read from the discussion which was placed before the commission; and I do this because I want to show the extent to which consideration has been given by the State commissioners to matters on which this committee is now passing. This discussion, as I pointed out, was prepared and distributed to all of the commissions by direction of our responsible committees. It affords information as to the extent to which the several commissions, in advance of the convention, at which, as they were advised this matter was to be taken up, had their attention directed to the propositions which were presented by the Howell bill, and which are also presented in these bills, which are before the committee now.

That discussion said:

We believe, however, that the major objection which members of the association will find to the Howell bill is that it does not remove the principal vices of section 15a.

Under section 15a, as it would be rewritten by the Howell bill, no material change is made in the aggregate-return-on-aggregate-value rate-making plan.

That is true of H. R. 7116. No material change is made in the aggregate-return-on-aggregate-value rate-making plan.

Whereas, the section as it stands, section 15a, instructs the commission from time to time to determine "what percentage of such aggregate property value constitutes a fair return," the rewritten section will instruct it from time to time to determine "what percentage of such aggregate rate base constitutes a fair return." The section would continue to direct the commission to produce the fair aggregate return, so fixed, upon an aggregate base.

The statutory rate-making plan which this association has repeatedly condemned as uneconomic is continued. The only change is that the commission is required to determine the base by which it measures the quantity of the aggregate return to be produced, by an accounting process, instead of by an exercise of judgment.

The vice of the present law, which disregards lack of usefulness of a road, in the actual movement of traffic, in a determination of the amount upon which it shall be treated as entitled to a return, is left uncured.

The vice of the present law, which takes no account of economic conditions, and of the volume of traffic moving, and of the value of service to shippers, but directs the commission to establish a fixed percentage aggregate return upon an aggregate amount, taken as representative of property of the carriers in the aggregate, is left uncured.

It is believed that these were the vices which have been the cause of the association's condemnation of section 15a in the past.

While the commission, in its administration of the section, has interpreted the same as not intended to deprive the commission of its right to take account of economic conditions, nevertheless the carriers do not acquiesce in that interpretation, and are now denying its correctness in the western grain rate case.

Congressman Hoch called attention to that the other day. The carriers have maintained uniformly, since section 15a was passed, that the revenue factor under 15a has been made the controlling and dominant factor in fixing rates. Some railroad lawyers do not go to the point saying that the commission can consider nothing else, but that factor is pressed upon the commission as entitled to control, and in *ex parte* 103, it was pressed on the commission as the only thing entitled to consideration at all. That was by the representatives of all the carriers.

Mr. MAPES. Is that provision in H. R. 7117?

Mr. BENTON. No; it is not. I am going to point out that later. It is in 7116.

While the United States Supreme Court in *Dayton-Goose Creek Railway v. United States*, 263 U. S. 456, sustained the validity of the recapture provisions, as within the constitutional power of Congress, there was involved in that case the bare question whether recapture might be enforced as to earnings above a fair return upon the value of the carrier's property as reported by the carrier itself, and never questioned before the Commission.

The Howell bill proposes to substitute a measure for determining recapturable excess, which measure or base may at any given time be more or less than value.

And, that is true of 7116, because that provision is in here, as I have pointed out.

But irrespective of the measure used, it is difficult to defend the principle of recapture for the benefit of the Government.

It would seem that rates ought to be fixed on a just and reasonable basis. Under such rates, if some roads are so located and so managed that they can not earn a fair return upon the investments which their properties represent, that is their misfortune. On the other hand, if under like rates other roads earn a very handsome return, that is their good fortune. In other kinds of business, if one has located his property well, and manages it well, he enjoys the advantages which flow from good location and efficient operation. Section

15a attempts to prescribe a dead level of earnings, as fair and proper for all companies, irrespective of location and management, and economic conditions, even, and to take away any railroad one-half of all it may earn above that level.

So far as large earnings result from a fortunate location, which enables a carrier to earn more than its competitors at a level of rates which is established by the Government as fair, it may, with much force, be contended that the fortunate location is an intangible element which must be reflected into value, upon which the carrier is entitled, as a constitutional right, to a full fair return. This connection has been uniformly opposed by this association, but it is earnestly made by carriers.

The question has not yet been passed upon by the United States Supreme Court.

In this connection it should be said that no attempt has been made by the Interstate Commerce Commission in valuing railroads under section 19a, to appraise and reflect the value of strategic location, and other such like intangible elements. Carriers claim that the values which have been found must be greatly increased to cover these elements.

These and other questions will be directly involved in recapture litigation, if the recapture provisions of the law are retained.

We believe it is not too much to say that public sentiment is naturally opposed to the uncompensated taking away from any person or corporation of that which it has lawfully earned. If a particular shipper is required to pay an unreasonable rate, a reparation claim by him for his benefit is justified, but if nobody pays too much, the taking away by the Government of money which the carrier has earned under a scale of rates approved by the Government is not easily justified. Sentiment is naturally against it.

The commission evidently fears that this sentiment will be entertained by the courts, and will result in the establishment in recapture litigation of judicial precedents which will be hurtful thereafter in rate litigation. In its report to the Senate committee on the Howell bill the commission said:

"In connection with any recapture of excess earnings, whether under the present law or under any amendment thereof, we think that Congress ought to be informed that there are certain difficulties and dangers which offer considerable menace to the public interest. Recapture is an undertaking which involves great labor and expense, both to the carriers and to the Government. But more important is the fact that it invites, far more than does the regulation of rates, litigation upon the part of the carriers. This invitation is accentuated by the fact that owing to litigation which has already occurred, the process of recapture has been greatly delayed, so that recovery would in a considerable number of cases involve the earnings of several years and the payment of very substantial amounts which it would tax the credit of the carriers to provide. It must be borne in mind that such excess earnings of the past do not now exist, in many instances, in the form of cash in the carrier's treasury, but have been invested, in whole or in part, in carrier property. Payment of recapturable funds would, therefore, involve to a considerable extent the issue of securities for the purpose of reimbursing carrier treasuries.

"Under such circumstances, it may be taken as certain that the carriers will resist recapture to the extent of their ability, and that



much litigation will ensue. Under all the attendant circumstances the result may be the establishment in these cases of certain principles of valuation and the like which may have an unfavorable reaction on many broader phases of public regulation, such as the regulation of rates."

I might enlarge upon that. I have no doubt that many legal errors can be found in the valuations which the Interstate Commerce Commission has made and is making.

Mr. HUDDLESTON. May I ask you whether you have discussed what should be done with the excess earnings under the recapture clause?

Mr. BENTON. I did.

Mr. HUDDLESTON. You did discuss that?

Mr. BENTON. Yes.

Mr. HUDDLESTON. Did you advocate that the commission were to keep it, or to return that money to the carriers?

Mr. BENTON. I did. I omitted reading it all out of consideration for the committee. I will say I am going to touch upon it in my statements here; and I am leaving with the committee a copy of the full discussion from which I have read, as it was sent out.

Mr. PARKER. And you make a pretty fair argument for consolidation.

Mr. BENTON. Everybody makes a fair argument for consolidation who appears here and discusses the existing facts. I can go into it at length, if you desire me to, but the reasons for consolidation are evident, and have already been touched upon by Commissioner Eastman.

I say that I have no doubt that many legal errors can be found in the valuations which the Interstate Commerce Commission has made and is making. That involves no criticism of the Interstate Commerce Commission. It could scarcely be otherwise. The first valuation of the railroads presented a multitude of intensely difficult legal questions, which were new, and hence could not be resolved by any study of judicial decisions. Nevertheless, they were questions that had to be decided.

If these valuations come to be reviewed in court, such errors as the commission may have made, in point of law, against the public, will not be discovered and pointed out; for the only representation on behalf of the public will be through the attorneys for the commission, and they will be defending the work of the Interstate Commerce Commission, and not attacking it. They will be believers in the rulings which the commission has made, because in many instances they will be rulings which have been made upon their advice or requests. On the other hand, the carriers have been from the first, and will continue to be, represented by counsel of great ability, aided by the best engineers, accountants, and other technical experts, who will discover and point out to the court every error which may have been made against the carriers.

Every valuation case has presented and required decisions of literally thousands of legal questions. In the Kansas City Southern case (6 Fed. (2d) 692) and the Los Angeles & Salt Lake Railroad case (273 U. S. 299), the courts have held that the valuations made by the Interstate Commerce Commission under section 19a are not subject to attack until they come to be used. If they are used as a basis for recapture claims, under which the Government seeks to

take back from the roads moneys which they collected in rates approved by the Government—and in some cases where the carriers themselves are in receivership, or near receivership—the circumstances are by no means the best for securing the development of valuation principles along lines which shall most fully protect the rights of the public.

The importance of this consideration, as bearing upon the desirability of retaining recapture for the period which has passed since 1920, is so great that I think it desirable to indicate rather briefly the nature of some of the legal questions involved.

At this point, I might interject that this bears upon the question which Mr. Huddleston asked me a moment ago.

The commission has never allowed any value for rights in the public domain, beyond the cost of their acquisition.

I am not now referring to grants of public lands, which became the property of the carriers, but I am referring to other rights which the carriers have been granted in the public domain. That includes not only property which is owned by the Nation but by the State, or by a subdivision of the State.

A railroad may, by law, have been permitted to lay its tracks through the streets of a city. The right to maintain them may not be terminable. The railroads claim the value of the land over which their tracks run. The commission considers the easement of the railroad in such a case a right in the public domain, and no value has been assigned to rights of that character beyond what the carrier expended in acquiring the rights. This rule has been uniformly applied, in the valuation of all railroads.

The CHAIRMAN. Will you repeat that last statement?

Mr. BENTON. I say, that the commission has never allowed anything for rights in the public domain, beyond what it cost to acquire those rights. I instanced the right of a railroad, granted to run its tracks over the streets of a city, which may not be terminable. The railroads in such cases uniformly claim that the lands under their tracks, in substance, belong to them, and that, as land or as easements in land, the rights must be valued and included in their value.

The commission has uniformly denied claims of that sort. Since that rule was laid down by the commission, the Court of Appeals of Maryland has announced a different principle. That held, in the United Railways case in Baltimore, that the company was entitled to have its easements in the public streets valued and included in the rate base. In the United Railways case (280 U. S. 251) \$5,000,000 was allowed for such easements in the streets of Baltimore, and was left undisturbed by the United States Supreme Court, and rates allowed by the Maryland commission were held confiscatory, although, if the \$5,000,000 had been eliminated, the rates condemned would have yielded 6.7 per cent upon the value of the carrier's property.

Mr. HUDDLESTON. What was that citation?

Mr. BENTON. 280 U. S. 251.

Mr. HUDDLESTON. May I have the name of the case?

Mr. BENTON. United Railways v. West.

Mr. HUDDLESTON. What was the book and page number?

Mr. BENTON. 280 U. S. 251.

The rates which the State Commission allowed were condemned; although if that \$5,000,000 had been eliminated they would have yielded 6.7 per cent upon the value of the remaining property of the carrier.

I am just instancing the kind of legal questions which are going to be thrust upon the United States Supreme Court for decision in these recapture cases, if the recapture provision is retained, either for the future or for the past.

In the abolition of grade crossings, for example, the cost of building bridges and other structures upon the rights of way of the carriers has often been paid for in whole or in part by the public. Some of our largest States have laws under which the abolition of grade crossings is proceeding, the State paying a stated portion of the cost, and the railroads paying a stated portion.

In other cases, without such statutes, municipalities or counties have donated to the railroads funds for use in abolishing dangerous grade crossings, in the construction of overhead bridges, and other structures, for the improvement of the highways.

Now, the carriers claim that the title to these structures on their land is in them, and that they must be included in reproduction costs. The commission has refused to include them, to the extent that it appears that they were originally paid for by the public. Now, does anybody know what the United States Supreme Court would say as to that?

Take another sort of question: In the Boston & Maine case the Commonwealth of Massachusetts had granted to the Boston & Maine, or its subsidiary or predecessor corporations, the right to carry the railroad on piles through the tide lands of the Charles and Mystic Rivers. The Boston & Maine claimed that these tide lands were its property, and must be included in its value. These lands thus claimed, as I remember, were valued by the land appraisers of the commission at upwards of \$1,000,000.

When the question first arose I was the solicitor for the bureau of valuation. The question was referred to me by Judge Prouty, who was then director of valuation, for a written opinion.

I found that the question was by no means free from doubt. There was no controlling decision. There were some Massachusetts opinions which lent some support to the carrier's claim. I reached the conclusion, nevertheless, that the right to maintain piles on those lands, submerged in public waters, ought to be treated like a right in the public domain, and that nothing should be included in the railroad value therefor except what had been paid in acquiring the rights enjoyed. I discussed the question fully in the written opinion given to the director, and cited, of course, cases which told each way, which I have referred to.

When the tentative valuation came to be issued, which was long after I had left the commission, the lands were excluded, and when the commission in 1930 passed upon the carriers' protest, the tentative valuation was sustained, as respects those lands, they were excluded. The commission's report contained a full discussion of the question and referred to the cases which were relied upon by the railroads. It will be found, if anybody cares to look it up, in volume 30, Valuation Reports, I. C. C., page 543.

That same rule has been followed throughout the commission's valuation of railroad properties. Does anybody know whether it would be sustained by the United States Supreme Court, if those values were to be used as the basis for enforcing recapture claims?

Now, I will give one more illustration, which involves claims which run into vast sums. The New York, New Haven & Hartford enters New York City over the tracks of the New York & Harlem Railroad, now operated by the New York Central. It acquired the right to run its trains over the Harlem road by an agreement made in 1848. The agreement then made was followed by another, made in 1907, which provided for the construction of the Grand Central Station, under which the New York Central, acting for itself and the Harlem, leased to the New Haven the right to a 50 per cent use of the Grand Central Station, in consideration of an agreement of the New Haven to pay its proportion of interest on the cost of construction and of the annual expenses for maintenance.

The New Haven Railroad also owns 80 per cent of the stock of the Boston Terminal Company and has an 80 per cent right to the use of the South Terminal Station in Boston under a somewhat similar agreement. The New Haven claimed that these leasehold and contract rights in these valuable terminal properties were highly valuable rights which should be included in its value, as found by the commission under section 19a.

Claims similar to these have been made by practically every important railroad valued by the commission, with respect to the property of connecting roads, which they have obtained the right to use by contract or lease. The commission has consistently denied all those claims.

The commission accordingly valued the south station and the terminal property belonging therewith to the Boston Terminal Co. It valued the Grand Central Station and the Harlem Railroad to the Harlem Railroad, as a part of the New York Central System. It added nothing to the value of the New Haven Railway property by reason of the rights which the New Haven had by lease or contract to operate beyond its own lines. The reason for this, as the commission has uniformly stated, is that when a property has been once valued, to the owning corporation, to allow another road to claim a value therein by reason of operating rights obtained over the same, would result in a duplication of values.

The refusal of the commission to value these rights has been contested by the New York, New Haven & Hartford in court. The Supreme Court of the District of Columbia denied an application for a writ of mandamus to compel their valuation. On January 18, 1932, however, the Court of Appeals of the District handed down a unanimous opinion to the effect that the writ of mandamus should issue and that the commission should value these operating rights and include the items in the New Haven valuation.

The commission will undoubtedly take this case to the United States Supreme Court. That court may hold that the case falls within the decisions heretofore made in the Kansas City Southern and Los Angeles cases, and is not subject to present attack. All of these questions, however, involved in these valuation cases—and they are multitudinous—will be open for review if the valuations which have been made come to be used as the basis for recapture claims.

Inquiry has been made during this hearing as to how long it will take to settle the values of the roads which are thought to be subject to recapture claims, and to recover the money claimed. Nobody will be found who will hazard a guess on that. It is, however, to be remembered, as the Congressman from Oklahoma pointed out (Mr. Garber), that the valuation act provides for remanding valuation cases back to the commission.

I venture the prophecy that there are few cases in which the commission has made valuations, which do not involve so many difficult legal questions that more or less errors will be found to have been committed, which will require them to be remanded back for further hearing of evidence, arguments and consideration, if the valuations come to be reviewed in court. And after they have been again considered and new values have been announced, those values again become subject to attack, and to the process of litigation through the courts. Accordingly, I do not think that the prospect is for any quick recovery.

Furthermore, these questions, for the most part, as I have said, have never yet been decided by the courts. Many of them are what lawyers call "close questions," in that they may be decided either way, according to the disposition of the court. They involve in the aggregate very staggering sums of money.

The valuation files in cases under 19a before the commission are literally full of claims made by carriers, and denied by the commission, running into vast totals, which vary from the fantastic to those which may be so well supported, and made to appear so reasonable, that they would very likely persuade the most judicial member of this committee that they should be allowed, if he were dealing with a single case, and did not take into consideration the effect which the establishment of the principle involved would have upon the valuation of other roads throughout the country.

The thought which underlay the suggestion, made in the discussion from which I have read, was that these close legal questions ought not to be decided in the worst possible atmosphere, from the point of view of the recognition of the equitable rights of the public; and that the worst possible atmosphere is created when the Government starts out to take away from railroads great sums of so-called excess, under claims which have accumulated for a decade or two—claims for money received under rates which have been held just and reasonable by the Government, and often running against carriers which have no money to pay them, which can obtain money only by burdening themselves with interest-bearing obligations.

These claims put many carriers in a hard situation. "Hard cases make bad law," it is said. We fear that if these doubtful questions are decided in recapture cases they will be too often decided in such a way as to swell the values of the railroads from which recapture is demanded, and thus reduce the amounts recapturable. The result will be to establish excessive values upon them in the future, and the public will be called upon to pay returns through rates.

The commission itself very frankly stated this fear in its report to Congress, December 1, 1930. At page 89 of that report, the commission said:

More important than this objection are the difficulties and dangers attendant upon the collection of the fund. As we indicated in our special report to the Senate committee, the possibilities of litigation are almost without limit. \* \* \*

Not only is such procedure very expensive to the Government and to the carriers, whose funds are derived from the public, but it also involves, we fear, other dangers to the public interest. To state the matter baldly and frankly, litigation over questions of valuation, accounting, and administration will arise in cases where the basic issue is whether or not, or to what extent, money shall be taken from the carriers by the Government, and possibly, in some instances, under financially embarrassing conditions. The unconscious influence of the surrounding circumstances is not unlikely to be such that the result will be to establish, in the course of this litigation, certain principles relative to valuation and the like which will have an unfavorable reaction on many broader phases of public regulation.

Returning now to the discussion which I was reading—distributed as I have before stated, by direction of our three principal committees, to the several commissions, I will state the conclusions arrived at, and stated in that discussion and the recommendations made. The date of distribution, as I have before said, was September 15, 1930.

What should legislation provide? To repeat and summarize what has been said in this discussion, as to the necessity for legislation, it would seem that any bill now enacted should provide:

- (1) A repeal of paragraph (f) of section 19a, and incidental thereto a repeal also of subparagraph (b) of paragraph (6) of section 5.
- (2) A repeal of the aggregate-return-on-aggregate-value rule, prescribed by section 15a.
- (3) A repeal of the recapture provisions of section 15a.

The CHAIRMAN. Mr. Benton, if I may interrupt, there is a gentleman I called on at the beginning of these hearing who has come in. He said that he wanted 20 minutes, so I think that we will hear him now. How much time will you take to-morrow?

Mr. BENTON. Aside from any questions which may be asked, I think that it will take three-quarters of an hour.

This makes a very convenient time for me to suspend for I have just completed reading the discussion distributed.

The CHAIRMAN. That is what I thought.

#### STATEMENT OF A. L. HOLTON, VICE PRESIDENT INTERSTATE RAILROAD CO., ANDOVER, VA.

Mr. HOLTON. Mr. Chairman, I will defer to this gentleman, if it is just as well, and you can put me on the stand to-morrow morning.

The CHAIRMAN. No; I would rather put you on now.

Mr. HOLTON. Thank you.

The CHAIRMAN. Mr. Thom, when Mr. Benton concludes, you will be ready to go on?

Mr. THOM. Mr. Bledsoe will follow Mr. Benton, and I will follow him.

The CHAIRMAN. You may state your name, and whom you represent.

Mr. HOLTON. A. L. Holton, vice president Interstate Railroad Co., Andover, Va.

I might state in the beginning, however, that the Interstate Railroad is located in the western part of the State of Virginia. It connects with the Norfolk & Western, L. & N., Southern, and Clinchfield.

Mr. MAPES. What is the mileage of the road?



Mr. HOLTON. About 62 miles, main line.

The CHAIRMAN. All right; you may proceed.

Mr. HOLTON. So far as the Interstate Railroad Co. is concerned, we subscribe in full to the statement made by Mr. Eastman on the 19th. It was our intention to present concrete evidence in favor of the amendment of the act, but there is really nothing that we can say about general conditions with which I am personally acquainted that Mr. Eastman has not already fully covered.

Before taking up our individual case, I wish, to preface my remarks with a short quotation from House Report No. 456 (66th Cong., 1st sess.), submitted with H. R. 10453, by Mr. Esch (Wisconsin), from House Committee on Interstate and Foreign Commerce, November 10, 1919, dealing with the questions of grouping, guaranteeing returns, and sharing excess over fixed return:

This form of guaranty is based upon the ability of the commission to set the level of rates within each group, system, or region, as will produce the percentage on property investment account, or on valuation, as fixed by Congress. We question the ability of the commission, or any regulatory body, to accomplish this result.

\* \* \* While this guaranty plan is propounded with much confidence as a solution of the problem of the so-called weak sisters, we believe that such elaborate machinery—so elaborate as to be unworkable in some of its parts—will result in disappointment.

We think that the experience of the last 12 years supports fully both of the statements printed above.

I am conscientious in saying that the Interstate Railroad Co. has never felt that it was, or is now, due the Government any excess income. But however this may be, we have been called upon by the Interstate Commerce Commission for the years 1920-1927, inclusive, for approximately \$400,000, to be turned over to the Government, and an equal amount would also have to be placed in a reserve account of our own to be drawn upon for specific purposes only, as provided in the act. This recapture report as regards our case, of course, was a shock and we are doing what we can to convince the commission that a terrible mistake has been made somewhere, and are hoping that we may be successful in our efforts. Conferences and hearings before the commission's examiners have been going on almost continuously for several months, and the hearing is not yet concluded. The hearing sessions have consumed 69 days since July 30, 1931, the dates being as follows: July 30, September 22 to October 2, October 12 to November 7, November 11 to 19, December 3 to 23, 1931. Two hundred and sixty-eight exhibits have been introduced, and over 4,800 pages of testimony is in the record to date.

During 32 years prior to 1928 the Interstate Railroad Co. did not earn anything like a fair percentage on its value or investment in road and equipment, or whatever it may be called. During the first nine years, that is, from 1896 to 1904, inclusive, it sustained a heavy loss each year. From then on it began to realize on its investment, but the highest recorded percentage of income during the whole period amounted to 6.51 per cent for the year 1919, and for 1920 amounted to 6.10 per cent. For the whole period of 32 years the average was considerably less than 5.5 per cent.

From the late Senator Cummins's speech dated February 23, 1920 (C. R., V. 59, pp. 3326-3327), in favor of the then proposed legisla-

tion, which is now section 15a of the interstate commerce act, I quote the following statement:

Without entering into the details of the situation, it is well known to every observer that we need 100,000 to 200,000 additional cars, we need more main tracks, more side tracks, more warehouses, and more terminal facilities of all kinds.

This statement covered our own situation at that time, exactly. We did not have sufficient coal cars and locomotives to handle our increase in business. We had four trunk line connections and a large supply of coal cars of our own for such a short line, but regardless of these trunk line connections and our large ownership of coal cars we could not supply the necessary equipment. This condition resulted in our purchase of 500 new coal cars which were delivered about April, 1920; 1,000, delivery of which was accomplished about January, 1923; and 500 more, delivered about May, 1923. We already had approximately 1,000 coal cars, and this new equipment increased our number to approximately 3,000. We also purchased additional new locomotives in 1920 and 1923. Thus it will be soon that the Interstate Railroad Co., almost simultaneously with the effective date of section 15 (a) and of its own accord, increased its facilities to better serve the public, which it was stated to Congress, had to be done if the railroads were to succeed in giving to the people what they must have. The demand at that time for coal cars was so great that some of these new cars, while en route from the builder's plant, were pressed into service before they even reached our rails, and after they were received home they were immediately loaded and sent to various destinations off our rails. Being new they were very inexpensive as regards running repairs and maintenance, and our per diem balances were greatly in our favor. This new equipment assisted in keeping our earnings on a fairly reasonable level. The cars are now old, almost ready for heavy repairs, mostly idle, and the majority stored on our rails. The day I left home, the 18th of this month, 800 per diem earning cars were off our rails out of a total of 3,000. This condition has existed more or less for some time past and may, perhaps, continue indefinitely. During 1930 our earnings on the recapture basis will amount to approximately 3 to 3½ per cent, and 1931 approximately 1¼ to 1¾ per cent, and unless there is a material change in the coal business, I dead to think of what 1932 will be.

A summary of our situation results in the following facts:

First. We have not earned a fair and reasonable percentage of income on our investment.

Second. We have absolutely met the public's requirements as to railroad facilities and service, so far as it is possible for a single railroad to do so.

Third. After over 11 years from the effective date of section 15 (a), a report was served on us by the Interstate Commerce Commission purporting to show that the Interstate Railroad Co. is due to pay into the Government reserve fund nearly \$400,000 for the period 1920-1927, inclusive—and during a serious business depression.

Fourth. Our earnings are now less than half of what Congress considers, or has determined is, a fair percentage return and less than half of what they would be if we were handling what we consider normal business.

Fifth. Our cars are old and adding heavily to expenses for maintenance of equipment, and as business revives and the idle cars are absorbed they will continue to increase these heavy additions to expenses for maintenance.

I may here state as a fact that it is inconceivable to me how we might possibly pay into this reserve fund such a large amount of money and continue to make needed repairs to equipment, without either borrowing from the reserve fund or from other sources at a high rate of interest, which would have to go into our operating expenses to further, accordingly, reduce our operating income.

I would like to also mention, though Congress is aware of the fact, that the railroads have established a credit corporation to administer the increases granted by the Interstate Commerce Commission in ex parte 103, which became effective the 4th day of this month, and this fund should amount to \$100,000,000 or more during the present year. This fund was made available to prevent default in fixed charges of the railroads, and this plan, together with the commission's power to adjust divisions as between the weak lines on the one hand and the strong lines on the other, may ultimately take care of the whole railroad problem.

During the hearing last week, Congressman Hoch asked Mr. Fulbright if, under the present statute, the railroads were required to hold the excess reported as due by Mr. Eastman as trustee for the United States, and if that has not been done, would there not be violation in that respect, or words to that effect. Mr. Eastman gave an estimated figure only, and stated that even the orders of the commission might be upset by the courts (p. 13 of his mimeographed statement). Our answer to this question is that we do not owe the recapture reserve any amount, and there was nothing to set up or hold as trustee for the United States. The entire amount of the commission's estimated recapture, or certainly a large percentage of it, is subject to formal hearing before the Interstate Commerce Commission and the courts.

From our experience to date we feel that it will cost the railroads of the United States and the Government in expenses for litigation almost, if not as much, as could ever be recaptured. We are, therefore, heartily in favor of repeal of the recapture provision, retroactive to February 28, 1920. Such action on the part of Congress would certainly help the railroads and not hurt anyone.

The CHAIRMAN. We are very much obliged to you, Mr. Holton, for your statement.

Mr. HOLTON. Thank you, Mr. Chairman.

The CHAIRMAN. We will stand adjourned now until to-morrow morning at 10 o'clock. Does the committee want to have a short executive session?

(Thereupon, at 11.30 o'clock a. m., the committee took a recess until the following morning, January 28, 1932, at 10 o'clock.)

## RAILROAD LEGISLATION

THURSDAY, JANUARY 28, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D. C.

The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.

The CHAIRMAN. The committee will come to order.

**STATEMENT OF JOHN E. BENTON, SOLICITOR OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, 810 EIGHTEENTH STREET NW., WASHINGTON, D. C.—Resumed**

The CHAIRMAN. All right, Mr. Benton, you may proceed.

Mr. BENTON. Mr. Chairman, before I proceed I would like to say this, that sometimes individual commissions call upon me to make statements, or present statements for them, to committees. Two of the commissions, clearly not knowing that the general legislative committee of the association was about to meet here and provide for the presentation on this matter, have sent me communications which they desire me to present to the committee. I have advised them that I would do this. Before I proceed with the general statement for the association, if I may, I would like to present a telegram from the Railroad Commission of Texas, supporting the proposed legislation.

The CHAIRMAN. Will you read it, Mr. Benton?

Mr. BENTON. I will.

[Telegram]

AUSTIN, TEX., January 25, 1932.

JOHN E. BENTON,

810 Eighteenth Street NW., Washington, D. C.:

The Railroad Commission of Texas favors the repeal retroactively of the recapture provisions of section 15a and all Texas Senators and Representatives will be advised. Please advise committee now considering bill.

C. V. TERRELL, Chairman.

I have also a somewhat extended resolution signed by all of the members of the Corporation Commission of Virginia, which favors the repeal of the rate-making rule of section 15a and the recapture provisions. It will be somewhat repetitive of what I shall proceed to say for the association as a whole. I would like, however, to read it into the record as part of my statement at this point, if I may.

The CHAIRMAN. The reporter will put that in.

(The resolution above referred to is as follows:)

Whereas in the statement made on behalf of the Interstate Commerce Commission by Commissioner Eastman before the Committee on Interstate and Foreign Commerce of the House of Representatives of the United States on January 19, 1932, in connection with bills known as H. R. 7116 and H. R. 7117 pending before that committee, the present rule of rate making is condemned as having a tendency to restrict rates in good times and to increase them in times of depression, and there was advocated the repeal ab initio of the recapture provision of section 15a of the interstate commerce act; and

Whereas the Interstate Commerce Commission in its annual report of December 1, 1931, quoted with approval from its report in the 15 per cent case, 1031, as follows:

"The present recapture provisions impose in their enforcement a vast expenditure of time and money upon both the Government and the railroads, they provoke litigation over complicated questions of valuation and accounting, they encourage extravagant expenditures by the more prosperous companies when times are good, they hang like a cloud over the credit of many companies when times are bad, and under the present law there is no effective way of using the funds to public advantage if they are recaptured," and followed this quotation with a recommendation that the recapture provisions of section 15a should be repealed ab initio; and

Whereas it has come to the knowledge of the commission that the National Association of Railroad and Utilities Commissioners and the National Industrial Traffic League, perhaps the most important organization of shippers in the country, have expressed themselves in a similar sense on this important subject; and

Whereas in the pending emergency the State corporation commission of Virginia deems it proper that it should express itself;

*Resolved*, The present policy of making rates applicable to interstate commerce, as expressed in section 15a, is based upon the theory that rates should be so adjusted as to yield a stable and adequate return to the carriers in all years, good and bad. To accomplish this it is not necessary for rates to be as high in good years, when the volume of traffic is large and shippers are in the best position to stand the charges, as in bad years, when the volume of traffic is lessened and the shippers are not in as good condition to stand higher charges. The result of this policy has been to restrict the earnings of the carriers in times of prosperity and to impair seriously their credit in times of depression. This, in the opinion of this commission, is a fatal objection to the rate-making rule of section 15a as it now stands. The foregoing is the view expressed by the Interstate Commerce Commission, with which this commission completely agrees.

The policy of section 15a in regard to the recapture of what are termed excess earnings is, in the opinion of this commission, equally unsound and objectionable. There was in the act no way of determining the amount to be paid in as recapturable funds until certain valuations had been made by the Interstate Commerce Commission. This, after the law has been in existence for nearly 12 years, has not been accomplished, except in a few cases. The result is, if the present provisions of law as to recapture are to be enforced, that the carriers will be confronted with huge claims, amounting to several hundred millions of dollars, with no reserve provision made for their payment and, in this depressed and disorganized financial market, with no ability to borrow. The attempt to enforce claims so large, with no means available of payment, would constitute a serious menace not only to the railroads involved but to the business of the country generally, and would create an obstacle to economic recovery from the existing depression which can not be exaggerated.

Under these circumstances, this commission heartily indorses the recommendation of the Interstate Commerce Commission that the recapture provisions of section 15a be repealed ab initio.

That a copy of these resolutions be forwarded to the Senators and Representatives from Virginia in Congress, and to the general counsel of the National Association of Railroad and Utilities Commissioners.

STATE CORPORATION COMMISSION,  
By H. LESTER HOOKER, *Chairman*.  
WM. MEADE FLETCHER, *Commissioner*.  
GEO. PERRY, *Commissioner*.

RICHMOND, VA., January 20, 1932.

Mr. BENTON. Mr. Chairman, I stated yesterday that a discussion of the Howell bill, covering matters which are involved in H. R. 7116, was prepared, by direction of our three principal committees and was distributed to the several commissions, prior to the 1930 convention. I also said that those committees had directed the preparation of resolutions to be submitted to the committees, and when approved by them, or in such form as the committees might put the same into, to be presented to the convention. At the convention, such resolutions were presented, and after full discussion they were adopted as follows:

Whereas this association by resolutions adopted in its annual convention held in 1921, and in five annual conventions since that year, has condemned the rate-making provisions of section 15a of the Interstate Commerce Act as uneconomic and unsound, and,

Whereas the imposition of rates which will enable some carriers "to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property" is not justified by the fact that some other carriers may earn less than a fair return, and,

Whereas the taking away from carriers which are thus permitted to exact income "substantially and unreasonably in excess of a fair return" of a portion of that return, as is now attempted by the recapture provisions of section 15a, is not of benefit either to shippers or to those railroads which fail to earn a fair return. Therefore, be it

*Resolved*, That this association reaffirms its attitude heretofore expressed respecting said section 15a.

*Resolved further*, That this association recognizes that the provisions of paragraph (f) of section 19a, which directs the Interstate Commerce Commission "from time to time" to make revaluation of all the railway properties of the United States "in like manner," as such properties were originally valued under section 19a, are impracticable, and that it is impossible to make any revaluation within such period of time as to accomplish the original purpose of said paragraph (f); and

*Resolved further*, That it is the opinion of this association that such changes in the law should be made as may be necessary to relieve the Interstate Commission from the duty to revalue the property of carriers subject to the interstate commerce act "from time to time" and "in like manner" as such property is required to be valued under section 19a, either under said paragraph (f) of said section 19a, or under subparagraph (b) of paragraph (6) of section 5 of the interstate commerce act, but without in any way diminishing the power of the Interstate Commerce Commission to keep informed as to the capital investment of the carriers and as to changes in the property of carriers, by requiring reports to be made by carriers which shall show such changes, and the cost thereof, and by inspection of carrier properties, accounts, and records.

These resolutions, by direction of our committee on legislation, and the president of the association, are presented here as indicating the judgment of the association with respect to the subject matter covered by these bills.

I want to say that in preparation for the meeting of the committee on legislation, which was called here by Chairman MacDonald this week, I prepared a tentative statement which I intended to present to the committee. Before the committee meeting I went over that with the president of the association who was here, and also with Chairman MacDonald. Some revision of it was made, and it was then presented to the committee and is now made with the authority of the committee; and these resolutions are presented by direction of that committee, as representing the present attitude of the association toward the legislation which is now before this committee.

The association has repeatedly declared that the grouping of road values for rate-making purposes is uneconomic and unsound. In its



first resolution relating to section 15a, adopted in 1921, to which I have already briefly referred, the association said:

Under such group plan the worthless roads of the country, ill-considered ventures, duplicated lines, speculative enterprises, and roads that have served their useful purposes and outlived the industries which once justified their construction are valued with the good, and the good roads are given the right to earn upon their own value and also upon the value attributed to such worthless roads, which can not earn because they perform no sufficiently useful service in the actual movement of traffic to enable them to earn.

The association is therefore opposed to any revision of section 15a which would provide an "aggregate rate base" made up of the reproduction cost of all roads, or built upon such reproduction cost. It is opposed to the proposition that one set of roads which are so situated that they can earn more than a fair return on their own properties shall be permitted to earn such fair return and also a return upon the properties of other roads which they do not own. For this reason, as between the two bills, we favor H. R. 7117, which repeals the aggregate return on aggregate value rate-making rule, and the recapture provision. These are the provisions at which the various resolutions asking repeal of section 15a adopted by this association have been aimed.

I believe that the discussion of these two provisions, which I presented here yesterday, fairly states the position generally of the State commission members of the association.

With respect to recapture, we believe that no public good will come from litigating the question of railroad values with roads which have earned more than 6 per cent upon their values as estimated by the commission, in the attempt to extract from those roads one-half of the excess. To avoid compelling payments which, as the commission has pointed out, can be made only by issuing new securities, we fear that principles of valuation unduly favorable to carriers will be adopted, and that excessive values will be fixed, which will be made the basis of unduly high rates in the future, to the injury of the public interest.

If the recapture provisions are repealed for the future but not for the past, and attempt is made to collect recapturable excess since 15a was enacted, the commission will be involved in litigation for a decade or two, at a very considerable cost to the Government and to the carriers; and the time and attention of the commission and its staff will be in a large measure diverted from the prime purpose for which the commission was created. If the recapture provisions are not desirable for the future, they have not been desirable for the past.

But little money has been paid into the hands of the commission except what has been paid under protest, the right of the commission to retain which is subject to litigation. The commission has barely scraped the surface, so far as recapture is concerned. For the years section 15a has been in effect, for reasons which Commissioner Eastman has stated, the section has not yet been enforced.

This is shown by the statement Commissioner Eastman made here the other day.

Out of 425 cases involving railroad systems from which recapture may perhaps be made, the commission has decided how much excess income it believes is due in only one case of importance—the R. F.

& P.—and in eight others, "all small" as the commissioner says. They are so small that probably few members of the committee ever heard of them. These roads, and the amounts believed to be due from each, are as follows. I will ask that the list be copied without taking the time of the committee to read it.

Mr. BULWINKLE. Mr. Chairman.

The CHAIRMAN. Mr. Bulwinkle.

Mr. BULWINKLE. I was very anxious to hear, and my impression is—I do not want to cut off anything that Mr. Benton has to say—my impression yesterday was that when you closed your remarks, that you were coming to what in the section you proposed as a remedy, in the discussion 7116 or 7117.

Mr. BENTON. I shall cover that, if I may.

May I proceed, and cover that later?

Mr. BULWINKLE. I do not know whether your time is limited or not, and that is the reason I asked the question.

Mr. BENTON. I think if I am permitted to proceed I will cover that. I will be glad to answer any questions that may be put to me, however, at any time.

(The statement above referred to is as follows:)

F. D. No.	Name of carrier	Amount
3898	Richmond, Fredericksburg & Potomac.....	\$891,696.84
3998	Wyandotte Terminal.....	8,241.17
3967	Tuckerton.....	1,949.68
3653	Oil Fields Short Line.....	2,497.64
3627	Batesville Southwestern.....	18,989.16
3659	Central Railway of Arkansas.....	2,064.44
3758	Hannibal Connecting.....	29,455.42
3778	Jonesboro, Lake City & Eastern.....	57,722.28
3797	Lake Terminal.....	15,376.97
Total.....		1,027,973.60

Mr. BENTON. The total amount of these recapture claims which the commission has decided and is ready to make is \$1,027,973.60.

Mr. MAPES. How much?

Mr. BENTON. \$1,027,973.60 for the nine roads in which the commission has made decisions in contested recapture cases. In addition to that, as Commissioner Eastman pointed out, approximately \$2,000,000 has been paid in, which is not subject to protest, and about \$11,000,000 which is subject to protest. Of course, the \$11,000,000 is in litigation. Nothing is decided about it. The funds have simply been turned over and are awaiting decision by the commission and the courts.

The situation has a ludicrous aspect, apart from its seriousness, as to which I am in full agreement with Commissioner Eastman and Mr. Fulbright.

This recapture law, which has been referred to in high places as the keystone of the arch—the provision enacted to benefit the weak lines by providing a fund to be loaned to them at a high rate of interest on good security—is so vague and uncertain in its provisions that the Interstate Commerce Commission, after spending 11 years to decide in nine cases how much money it is entitled to demand, does not now know what to do when its demands are refused. This is shown by what has happened in the R., F. & P. case—which is the

only case, so far as I know, in which anything at all has been done after making demand.

The commission has all along been doubtful as to how it should proceed to enforce recapture after it has decided what it ought to demand. In its report to Congress December 1, 1926, at page 19, the commission said:

The act needs clarification both as to the bases for computation and the manner of enforcement. \* \* \*

As to enforcement, the law now declares that one-half of the carrier's excess income as therein defined shall be held by it as trustee for the United States and be recoverable by and paid to the commission. Whether such recovery shall be effected by proceedings in court; and if so, whether by action at law or suit in equity, brought by the commission or by the United States, is left unsaid. What weight should be given to the finding made by the commission as to the excess income recoverable and the elements which necessarily enter into such determination should also be clarified by statute.

No amendment of the act was made in consequence of this recommendation. When the R. F. & P. case was decided the commission's demand for payment of the excess fund due was ignored. The commission was still in a quandary as to how to proceed to enforce a demand. So it took the matter up with a certain very powerful official whose name is McCarl. The correspondence is printed in the *United States Daily*, August 8, 1931. In it Chairman Brainerd said to Mr. McCarl, among other things—I will not read the entire letter:

The time fixed for the payment of the principal sum under the order has expired and the carrier has failed to comply with the order. The commission is, therefore, confronted with the question as to the proper course it should pursue in compelling the carrier to make the payments required of it by the commission.

Respecting the procedure, briefly it may be said that the carrier has a clear-cut and well-understood remedy, if it desires to contest the order, by bringing an action in the district court to have the order set aside. Undoubtedly the commission may resort to legal means to enforce payment of the sum, although there is no precedent by way of legal decision indicating clearly the appropriate remedy for enforcing the order.

If the commission is called upon to institute legal proceedings for the collection of these funds in this and other cases, which will arise under the act, the recovery of the funds and the administration thereof by the commission in accordance with the intention of Congress will unquestionably be subjected to serious delay.

The commission's suggestion was that the Government should withhold from the R. F. & P. the pay for carrying the mails. This seems to have sounded all right to Mr. McCarl, and he did withhold the money; but so far as I know he has not paid any of it into the hands of the commission for loans to weak roads.

Furthermore, the expedient has not yet resulted in any action by the R. F. & P. which will hasten a decision as to the validity of the commission's recapture order. Evidently the commission thought that withholding the railway mail pay would cause an action to be brought to set aside its order, and that thereby the validity of the order would be tested in court. The R. F. & P. has no disposition to help the commission out. What it has done is to bring an action against McCarl as Comptroller General to enjoin him from withholding money due from the Government to the carrier.

It is my understanding that the Attorney General of the United States has held that recapture funds are trust funds not belonging to the United States.

If he was right about this, it may well be doubted whether a recapture claim of the Interstate Commerce Commission can be thus offset against what the Government owes. If the court shall enjoin that procedure, the commission will finally have to begin experimentation to determine what course of legal procedure can be followed to collect such amounts as it may hereafter demand.

Aside from this uncertainty as to how to proceed after demand, however, the outstanding fact is that Commissioner Eastman tells you that out of 425 cases the commission has got ready to make demand in only nine. This in number is 2 per cent of the whole, but the amount involved, as I have just shown, is only \$1,027,973.60, or less than three-tenths of 1 per cent of the \$378,000,000 which has been mentioned here as possibly subject to recapture.

The immensity of the task which remains before the commission can even decide what to claim, is shown by Commissioner Eastman's statement. Every recapture case is a valuation case; and every recapture year presents a separate case, calling for determination of value for that year, under prices current then, and of the income for that year.

I believe it is no exaggeration to say that no such gigantic program of litigation was ever before contemplated, much less undertaken, by any Government at any time.

In dealing with the present situation, it is desirable that we should recognize facts as they are. Repeal of the recapture provisions will not mean giving the railroads \$378,000,000. The Interstate Commerce Commission neither has that amount, nor any prospect of getting it.

The facts are that the passage of section 15a has resulted in a judicial decision that recapture is constitutional, so that if the necessary investigations are made and the necessary litigation is carried through, the Government may constitutionally recapture whatever is recapturable under the law—to use for the trust purposes provided by the statute.

Nobody has any intelligent opinion as to what can be recaptured. An estimate has been made that perhaps \$378,000,000 is due from 425 systems, but Commissioner Eastman very candidly presents that statement, to use his words, "with all manner of reservations." It was summarily made by subordinates of the commission without hearing, by the crosscut method which was condemned by the Supreme Court in the O'Fallon case.

The commission has actually received in cash \$13,000,000, which is in the United States Treasury, but less than \$2,000,000 was paid without protest. The rest was received subject to protest and the commission's right to retain it must be settled by recapture proceedings, before the commission and by litigation in court.

How much can be extracted from the railroads by attempted enforcement of recapture, nobody knows. Of course, every carrier will resist before the commission and in the courts for the purpose of whittling down recapture in every possible way. All of these close questions which have been decided by the commission, some of which I mentioned yesterday, involving vast sums of money, are going to be reviewed.

In the first place, they are going to be reviewed by the commission itself. In point of law, it is the same commission which decided those questions originally. In point of fact, it is another commission, in that a majority of its members are new, since most of the principles were established under which the 19a valuations have been made.

If these questions are now reviewed by the commission in a series of recapture cases, seeking to take money away from carriers which are struggling with adversity, as many of them are, does anybody know that this commission, with a changed membership, dealing with hard situations before it, will not modify principles which were established in earlier years? Questions then were considered in the abstract, and no such results were in sight as would now be produced in many concrete cases.

Let it be remembered also that such decisions as that of the United States Supreme Court in the O'Fallon case and the other court decisions like the New Haven case and the United Electric Railway case, of which I have spoken, will be pressed upon the commission as showing that the former commission decisions were erroneous, and that values must be increased to conform with the rules laid down by the courts.

When the commission made its revaluations in recapture cases, the carriers will have the right to establish their values in court, claiming the protection of the Constitution, and the strict application of law.

Nobody can tell how the courts will decide such legal questions as I mentioned yesterday, or the effect their decisions will have on the recapture claims.

If the unanimous opinion of the Court of Appeals in the New Haven case is right, think of the effect that single decision will have; and consider the complications it will produce.

Mr. Fulbright, who preceded me, said that \$40,000,000 of recapture claims exist against the terminal roads, and that many of the roads which use those terminal properties, and have by their traffic enabled the earnings of the supposed recapturable excess, have fallen short of earning a fair return. That everybody knows.

Under the New Haven court decision, many of these roads have, in effect, a fractional interest in these terminal properties, upon which they are entitled to earn a return. Can the Government, or should the Government, if it can, take away \$40,000,000, or any other sum, from these terminal properties, leaving the roads which indirectly own them without a fair return on their railway property, recognized by the courts?

I said the other day that the commission had not listed and valued intangible elements. Subdivision (a) of the act directs that the commission shall make an inventory which shall list the property of every carrier and shall show the value thereof. It then directs how the physical property shall be classified. Subdivision (b) then proceeds to direct that the commission shall "in like manner ascertain and report separately other values and elements of value, if any."

Enormous claims have been presented to the commission for "other values and elements of value." For example, in the Los Angeles, San Pedro & Salt Lake case, with which I had something to do, Judge Lovett, president of the Union Pacific, testified as to value.

He pointed out many intangible elements, including, among other things, enhancement of value made by abandonment of parts of lines and new construction in their place to improve location, eliminate curves, and the like. The cost of such abandoned portions was not reflected in present reproduction cost. He claimed such cost was a proper part of the cost of the road to-day, which should be reflected in its value. Other intangible elements mentioned were the added values flowing from consolidation of separate properties, and the values arising from established business, and from prospective development of the countries served, and so on.

The reproduction cost, new, of the properties of that carrier, including present value of lands and working capital, was \$48,309,345. The reproduction cost new, less depreciation of the same properties, was \$40,900,821. Judge Lovett testified that the property, including intangible elements, was worth \$82,000,000. The commission found a value of \$44,960,000.

As to intangible elements, the commission said:

No other values or elements of value to which specific sums can now be ascribed are found to exist.

That phrase, which I have just read, is the stock phrase with which the commission has made disposition of claims for the appraisalment of intangible values in other cases.

The court in the New Haven case seems to hold that the commission may not refuse to value and list intangible elements. On this point it said:

Subdivision (a) of section 19a of the act, directing the listing of the property, we think clearly refers to all property, whether physical or incorporeal, since it specifically points out the way in which the "physical property" shall be classified.

In the Kansas City Southern land valuation case (252 U. S. 178) the United States Supreme Court held that whatever Congress commanded should be done in valuation, the commission must do; and we had to come to Congress for an amendment to get the commission relieved from finding and including a multiplied value for railroad lands. Some of the members of the committee will remember that bill.

If the law requires the separate valuation and listing of all intangible elements because Congress has included the language which I have read, as the court in the New Haven case said, then we are a very great distance from completion of the first valuation under section 19a, and nobody can guess where the advances which may be made later will land us.

The carriers claim everything. Some of their intangible claims are in the nature of property rights, while others are like claimed allowances for the additional value alleged to inhere in a water supply in the desert, because it can not be duplicated, or to spring from the sunshine of the Imperial Valley, or from the prospects that settlers along carriers' lines will increase and transport freight from which the carriers will earn money.

The value claimed for intangible elements for the Southern Railway was \$100,000,000; for the Louisville & Nashville, \$60,000,000; for the Southern Pacific, \$83,000,000; and for the C. B. & Q., \$140,000,000. The Wabash, which has a recapture claim against it but is



in receivership, claimed the modest sum of \$22,188,958. These are sufficient for illustration.

I do not present these claims here as something likely to be established if the New Haven opinion is sustained, except so far as they represent what the court may hold to constitute property rights. I point to them, however, to show what claims remain to be settled by litigation before the values made by the commission can be used as the basis for recapture of excess earnings, and how wise Commissioner Eastman was to present "with all manner of reservations" any estimate of the amount of excess which may be ultimately found due the Government.

Stated briefly, then, instead of having \$378,000,000 to give up the Government through the commission has less than \$2,000,000, or about one-half of 1 per cent of that amount under its control; and the commission has completed investigations which enable it to make claim to about three-tenths of 1 per cent more; but it does not know just how to get the money after it has decided what it is entitled to claim.

This disregards, of course, the partially completed investigations, but it states accurately where we have arrived.

The questions before the Congress are: (1) Shall the Government now undertake to effect recapture for the period since the transportation act was passed, and for the future; or (2) shall it abandon recapture for the future but attempt to enforce it for the past; or (3) shall it abandon the recapture plan altogether.

It is my personal view that it would be much better to enforce recapture for the future and abandon it for the past than to abandon for the future and enforce for the past. I say this for the reasons which appear from the report of the Interstate Commerce Commission, in which it is pointed out that excess earnings which the carrier have received in the past are not held by them in cash but have been invested in properties, and that the payment of large accumulations of excess might cause substantial financial embarrassment. We are in accord with the Interstate Commerce Commission in the view that recapture should be repealed *ab initio*; and the bills which we caused to be introduced in 1921, which I spoke of yesterday, and upon which hearings were held before this committee and in the Senate, were bills for the outright repeal of section 15a.

I would suggest this additional objection to the rate base provision of H. R. 7116. If that bill is enacted it will require the commission to make an aggregate rate base by putting into the aggregate for every road (1) the cost of reproduction new of physical properties as determined by the commission in its first valuation under section 19a (less the amount set up in the depreciation account); (2) the value of land as determined in such valuation; and (3) the net cost of additions and betterments made subsequent to such valuation.

This deduction for depreciation, as has been pointed out by somebody on the committee, ought to be the full depreciation, if that plan were to be followed. Beyond that, however, I suggest that it is not safe, in view of the uncertainty as to where prices are going to be in the future, to declare by a law of Congress that the commission shall put into the rate base the property of the carrier at the cost of reproduction as of 1914, or its lands as of 1917-18, or of its subsequently acquired property, as of the price at which it was

acquired, without any regard whatever to the hereafter existing general level of prices, when a rate base is used.

If Congress shall provide such a rule, it will bind the public but not the carriers, because the carriers individually can always fall back upon their constitutional rights to have the reproduction cost considered, while the public can not complain of the rates which the commission may fix according to an act of Congress.

For these and other reasons, we consider the rate base provision of H. R. 7116 objectionable and of no advantage to anybody. Under H. R. 7117, the commission can do everything which it could do under H. R. 7116. It will not be required to make the rate base, or its measuring stick, in the manner there outlined, if price levels obtain which would make that method obviously unjust in its operation and effect, but it may arrive at its conclusions in that way if that seems just.

H. R. 7117 represents a frank departure from an attempt to put into effect a statutory rule of rate making. It is a return to the rule of the Constitution, which assures to every public service corporation the right to earn a fair return on the value of its property, determined in the light of its investments, the extent and character of its property, and the amount of the services it performs, and the value of those services to those for whom they are rendered.

What constitutes a fair value for a public service property, or a fair level of the rates for the use of its property, is an equitable problem, which must be determined in the last analysis in each case by some man or body of men, as an act of judgment upon the facts in that particular case.

It is not possible to frame a rule by statute which will apply justly in every case, and under all conditions which may arise.

After the transportation act was passed the commission started out to make rates which would yield the 15a return upon an aggregate value which the commission fixed. It made increases of staggering magnitude: in the South and upon the Pacific coast, 25 per cent; in the Middle West, 35 per cent; and in the East, 40 per cent. These increases upon the traffic then moving would have produced the return. But the traffic did not move. The attempt to give the return broke down. In 1921, faced with prostration of agriculture, in the West, the commission said that the 15a return was something to be obtained if possible, but that under then-existing conditions it could not be obtained. One-half of the 1920 increases was taken off grain, grain products, and hay.

The next year, with business at a standstill, and the carriers not within sight of the 15a return, a 10 per cent general reduction in all freight rates not before reduced, was ordered.

Since then, the commission has steadfastly refused to recognize the rule as commanding the commission to raise rates upon a mere showing that returns are below the percentage fixed under 15a.

The rule is impossible of application. If the commission had attempted to apply it, the business of the country would have been destroyed. The carriers have known that and have in the main acted accordingly, for during a period of 10 years of prosperity, when they were not receiving the full 15a return they have not sought to increase their rates until comparatively lately, when they began to suffer from the depression.

In England, in 1921, in providing for consolidation of railroads, Parliament prescribed a rate-making rule, suggested by our own section 15a. The English rule, however, leaves no room for interpretation. It explicitly commands the rate tribunal from year to year to make such changes as are necessary to enable the standard return prescribed under the act to be earned.

That statutory rule has broken down. The carriers have never earned the standard return. They, however, admit, and the rate tribunal finds, that the standard return can not be produced by increasing rates. Hence, no attempt to apply the rule has been made.

In a brief which I filed on behalf of State commissions with the Interstate Commerce Commission in the 15 per cent freight rate increase case, I quoted from the English act and from decisions of the English railroad rate tribunal. I will not take time to read those quotations now, but I will hand that section of my brief to the reporter, pages 85 to 93, inclusive, with the request that it be added to my remarks at the end, if that may be done, Mr. Chairman.

The CHAIRMAN. That may be done.

Mr. BENTON. My point is that we should make a frank departure from an attempt to fetter the judgment of a rate-making tribunal by a statutory rule, and return to the good old constitutional rule, upon which no one has yet been able to improve, which leaves the rate-making authority to fix those rates which are just and reasonable, under the facts and circumstances shown at any given time.

H. R. 7117, however, proposes to revise section 15a instead of to repeal it outright. The revised section would give certain directions to the commission, as to what it shall consider in the exercise of its duty to fix rates. There is danger in that. The commission is the agent of Congress and ought to seek to follow such directions as Congress gives it; and, of course, it will seek to do that. If Congress, as proposed in H. R. 7117, shall direct the commission, for example, to consider "the necessity, in the public interest, for the carriers to establish and maintain a sufficient credit to attract capital," and if it thereafter declares it to be the duty of the commission "to maintain as far as possible a general level of rates which \* \* \* will produce revenue consistent with the standard set forth," the danger is that the commission may understand that Congress has declared that the public interest requires a level of rates which will sustain the carriers' credit, and that other factors, not mentioned in the statute, but which are indispensable to consideration, if just and reasonable rates are to be established, will be crowded out of the commission's consideration.

It has already been pointed out to this committee by Commissioner Eastman that the necessity for maintaining a proper credit is a necessary factor to be considered under the constitutional rule as laid down by the United States Supreme Court in the United Railways case (280 U. S. 234) and in other cases.

The necessity for maintaining an adequate system of transportation has been recognized by Congress by the passage of the transportation act and has been often emphasized by the United States Supreme Court.

Irrespective of any particular direction, it will, accordingly, be the duty of the commission to give consideration to these factors.

If we continue to have an Interstate Commerce Commission qualified for the performance of its duties it will give proper consideration to them and to all factors without being especially directed thereto by language of the act as to any. The danger of giving special direction as to some is that they will be urged upon the commission in rate cases hereafter as the controlling factors, just as the "aggregate-return-on-aggregate-value" rule, now in section 15a, has been urged in every important general rate case heard before the commission since section 15a was enacted.

I want to conclude by showing the committee the way the carriers in rate cases have sought to use the statutory rate-making rule now in section 15a to compel exclusive consideration of the single factor which the section specifies. I wish to do this not in language of my own but in that of the Interstate Commerce Commission and of the Federal court.

The following is quoted from the commission's report in the recent Fifteen Per Cent case (Ex parte 103, 178 I. C. C. 539):

Because of the provisions of section 15a it is contended that rates, otherwise reasonable, perforce become unreasonably low if the general schedule of rates, of which they are a part, produces revenues which in the aggregate fail to attain the results contemplated by the section. Quoting from the carrier's brief, "It is thus apparent that in any case involving the reasonableness of an increase or decrease in the general rate level, the revenue consideration is paramount and controlling." Quoting again, it is said "that the use of the expression 'just and reasonable rates' in section 15a connotes a different meaning from its use elsewhere and recognizes the paramount financial consideration." It is urged that the section is superimposed upon the power to prescribe just and reasonable rates in such a way that if the effect of the exercise of that power is to bring the revenues above or below the statutory level, adjustments of earnings to that level must be made by us through other changes in rates. The words "as nearly as may be," in paragraph (2), according to this view, introduce no discretionary factor but merely cover the mathematical impossibility of attaining the prescribed standard precisely.

The following is from the opinion of the United States district court in the Western Grain Rate case:

Plaintiffs contend that the commission is without jurisdiction to establish rates upon grain which it claims will deprive it of many millions of dollars in revenue when the return of 5½ per cent is not being earned; that section 15a puts upon the commission the duty of initiating such rates as "will, as nearly as may be" earn such return; that "will" implies not mere permission but "insures," so far as possible, "without direct guaranty" that statutory fair return and that the commission treated the statutory provisions as granting to it mere permission and thereby committed error in failing to follow the legislative mandate. \* \* \*

Plaintiffs' contention in effect is that the commission is without power to modify existing particular rates, admittedly not producing a fair return, so as to warrant a reduction in revenue. We do not so construe the act. *Atchison, Topeka & Santa Fe Railway Co. et al. v. United States of America et al.* (decided July 6, 1931, in the District Court of the United States for the Northern District of Illinois).

This last quotation, of course, confirms absolutely Congressman Hoch's understanding of what the attitude of the carriers has been.

From the time section 15a was enacted the single factor of revenue has been urged upon the commission as a statutory test of reasonableness in all important rate cases.

The danger of adopting such language as is proposed in H. R. 7117, in lines 1 to 9 on page 2 of the bill as printed, is that the carriers will argue that the Congress has thereby commanded the maintenance of credit, and made that the determining test of reasonable-

ness; and that they will come here in every important rate case, supported by cohorts of financial associates from New York, who will in effect threaten the commission by telling it that unless such and such action is taken the wells of railroad credit will dry up.

Just about that very thing did happen in Ex Parte 103, and in 1926 in the Western Advance Rate case, known as Ex Parte 87, under the law as it is. The commission refused to be overborne in each instance. If, however, it had been under a mandate from Congress to maintain railroad credit, I do not know what would have happened. We hope that Congress will not put language of that character, nor any specification of particular factors to be considered, into any act which it may pass.

We see no objection to language which will make clear that no reversal is intended of the policy of adequate maintenance for a national system of transportation; but further than that we think Congress can not go without having its language misconstrued and misused.

In this somewhat extended statement, which I thank the committee for listening to so patiently, I have endeavored to show that from the beginning the State commissioners who have studied these problems have seen the disadvantages and dangers in section 15a. They pointed them out to this committee and satisfied this committee that they existed when the transportation act was being considered here; and language which was used by my predecessor, Mr. Elmquist, will be seen to have been carried into the report of this committee, in substance, when it reported on the bill at that time. Then the first year after section 15a became law, watching the operation of it, and particularly its administration by the Interstate Commerce Commission in Ex Parte 74, the State commissioners passed the resolutions which I have read, and presented them here in 1921; and year after year since they have pressed their views upon the attention of Congress.

We appreciated the efforts of Mr. Fulbright, who urged like action upon his association and secured the passing of some sort of a resolution some five or six years later—in 1926, I think—which he has presented here. We welcomed those "pioneers." We are also observing with interest the fact that Judge Thom and Mr. Bledsoe are here. We do not know what they are going to say, but if they have learned that they paid a rather high price when the transportation act was passed in consenting to recapture in the hope of getting something which has proved to be not collectible, we are glad, and if they now also are going to become "pioneers" in aiding to cure the error of 1920 we will welcome them, too.

We do not know what they will say. We rather suspect they will say "We want relief from recapture, but we want to keep in section 15a something which will enable us to continue to make the same kind of arguments we have been making in rate cases for the last 10 years."

It is easy enough to see why they consented to recapture in 1920. Evidently they believed that the rate-making rule of 15a could be enforced. If it could be, they saw in it vast profits for themselves. Commissioner Eastman has told you that if the 15a return was earned the carriers would be able to pay interest on their bonded indebtedness and set aside one-half of one percent for surplus and

would also make an average of fourteen per cent on all of the railroad stock outstanding, if distributed evenly.

But because it is not distributed evenly, it would be not fourteen per cent for all of the roads, but on the roads that actually earned and took in the money—the roads that move the bulk of the traffic—20 per cent or 25 per cent, or something like that. They knew that the country would never stand for that, so they were willing to consent to pay part of the excess to the Government, if they might be enabled to secure the excessive revenues the 15a return would give them.

They have now discovered that a bad, uneconomic law is not workable, and that they can not get the 15a return. Section 15a has broken down; but the price they consented to pay for it is still demandable.

If it was the men who devised 15a who were going to pay the penalty we could afford to be indifferent to recapture, but the penalty for that uneconomic law is going to fall upon innocent investors in railroad securities, and, worse than that, upon the people of the country as a whole.

And, therefore, the State commissioners appear here and make this statement in continuation of the efforts which they have been making since 1919 to keep the Interstate Commerce Commission free to make just and reasonable rates.

The country has had and still has an Interstate Commerce Commission which merits the confidence of the country. It can be trusted to give that degree of consideration which ought to be given to the maintenance of an efficient national transportation agency without any specific direction from Congress.

If there is anything that can be put into the bill, repealing section 15a, however, which will assure any timid souls that it is not the intention of Congress nor of the country, to starve the national railway system, we see no objection to such language; but we ask the Congress not to put into this act, which is proposed to cure an existing evil, other language which will enable the carriers to come down before the commission in every important railroad case, supported by cohorts of Wall Street bankers to threaten the Interstate Commerce Commission that if the rates are left where they are, and not increased at the demand of the carriers, that the wells of credit will dry up. They have done that before, in Ex Parte 87, at the height of our period of prosperity; they did it again last summer in Ex Parte 103. In both instances the commission refused to be overborne, but if the statute had carried words from Congress which seemed to commend the commission to maintain the credit of the carriers, I do not know what would have happened. We ask you not to put such language into the statute.

I thank you, Mr. Chairman, for the patience with which the committee has listened to me.

If there are any questions which anyone may want to ask, I shall be glad to answer them.

The CHAIRMAN. We thank you very much, Mr. Benton, for the splendid presentation of your side of this case.

Colonel THOM. Mr. Chairman, in connection with what Mr. Benton has said in his statement, of course he did not intend to make any erroneous statements as to the attitude of the railway executives



in regard to this recapture case, but I want, at this time, in connection with this part of the record, to say it is a fact, known to the chairman, that the Association of Railway Executives opposed the principles of section 15a at the time they were presented.

The CHAIRMAN. Are there any questions of Mr. Benton?

Mr. MAPES. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. I take it you are definitely opposed to the provisions of H. R. 7116?

Mr. BENTON. Yes, Mr. Mapes.

Mr. MAPES. And that—

Mr. BENTON. To those particular portions which relate to the rate base and direct the fixing of an aggregate fair return thereon, and the making of rates that will yield that aggregate return.

Mr. MAPES. You think, to use your language, that that would allow the more favorably located roads to not only earn a fair return upon their own property, but as you say, a return upon property which they do not own as well?

Mr. BENTON. That is the command of Congress, that the commission shall allow rates that will do that.

Mr. MAPES. Do you think that the aggregate return or rate base in 7116 would still permit that, the same as the section 15a of the present law?

Mr. BENTON. I think so. Of course, as I said yesterday, 7116 contains some language which gives the commission a degree of discretion, but it contains the plan of throwing all the roads together and taking instead of their value the aggregate of their investment as the aggregate base upon which the commission is to construct rate schedules for the country.

Under that plan, for example, a road which may have been built to serve a mine, or a logging enterprise, having outlived those industries but being still continued in operation because certain settlements have grown up there and a little something more than operating expenses can be earned, is treated as if of 100 per cent value, and entitled to be thrown in and earned upon like other roads which move traffic in volume.

Mr. MAPES. And you also think that in setting up the three particular standards of 7117 would be a mistake? Is it your idea, Mr. Benton, that we could repeal outright section 15a, and paragraph (f) of 19a and stop there?

Mr. BENTON. Mr. Mapes, I agree with Commissioner Eastman, that that would cure the evil of section 15a H. R. 7117; would also repeal that part of section 5 which compels revaluation in consolidations. That also is contemplated in both of these bills.

I think outright repeal of section 15a would accomplish everything that is desired.

But, as I have said, if the Congress thinks, for the assurance of anybody who is timid, that it is desirable to say in substance that the repeal is not to be construed as a reversal of the policy of the Congress to properly sustain a national transportation system, there is no harm in that. When you pick out one or two elements, however, which under the Constitution as interpreted by the courts, must be considered, and mention those and do not mention any others, you give undue emphasis to them and place a handicap on

people who are interested as shippers in rates and who come here to try their cases before the Interstate Commerce Commission.

Mr. MAPES. You think that the commission, in recommending this provision was overinfluenced by the distrust of the people of the commission, as Commissioner Eastman mentioned?

Mr. BENTON. I did not interpret his language as indicating that there was any distrust of the judgment of the Interstate Commerce Commission. I do not want to be understood as saying that.

I do not think that the commission has been overinfluenced. But most everyone likes to have someone carry the load or help carry the load. If the commission is disposed to increase rates for the purpose of helping railroad credit it will do it whether there is a language in the act directing it or not; but if it can point to the act and say, "We are under a command of Congress to do this," the responsibility rests with Congress and not with the commission, where it should rest.

The commission is a rate-making tribunal. It should investigate and determine the facts and make its decisions and carry the responsibility.

Mr. MAPES. Mr. Eastman, in his statement, said:

That formula was introduced in the bill as a barometer of earnings, I may say solely because it was felt that due to possible distrust of the commission, investors might feel better.

He uses the term "investors," instead of the public.

Investors might feel better safeguarded if a definite standard should be set up as a guide, even if there were no objections to following it implicitly. The country could then watch the progress of the earnings and note their deviations up or down from the standard so provided and bring the force of public opinion to bear upon the commission in a legitimate and appropriate way. It was felt that the commission was erring in its action. It was also believed that the rate base formula recommended provided a fair and reasonable standard. If it is thought that no such standard or barometer of earnings is needed there is no reason why the commission should object to its omission.

Mr. BENTON. I heard that. I think that perhaps Commissioner Eastman had not in mind certain parts of the hearings before this committee on the bill which became the transportation act. The situation, then, was this: The railroads were losing great sums of money under public control. They were going to pass back to their owners. It was perfectly evident they would continue to lose those vast sums of money under the then existing rates. The commission knew that it was going to have to allow large increases because of the great increase of operating expenses.

Commissioner Clark came before this committee and said that he thought that it was desirable to put into the act something of the nature of what finally went into it as 15a.

I am speaking from recollection of what took place years ago, without recent reading, but in substance, that will be found to be the situation.

Now, you asked me what I think about the commission. What I said I did not mean to be a reflection upon a body for which I have a very high estimation, but I said that I thought that they may have wanted somebody to help carry the load.

Mr. MAPES. I understood that.

Mr. BENTON. I think at that time, with the enormous increases which they knew were ahead of them, that they were glad to have

something put into the statute which they could point to as in the nature of a command of Congress.

Mr. MAPES. To a certain extent the association you represent might be influenced in the same way, would it not? Let me ask you this: How much do you suppose that your association is influenced in its judgment by the desire perhaps to have a free hand in the fixing of rates?

Mr. BENTON. You mean with respect to 15a?

Mr. MAPES. Yes.

Mr. BENTON. None whatever. You probably have in mind that in former years we placed great emphasis upon that in connection with other proposed amendments, but my judgment is, as a matter of law, if you repeal section 15a outright and do nothing more it will not in any respect affect the powers which the commission has under section 13 (4) to prescribe intrastate rates as there provided.

Mr. MAPES (interposing). I did not mean that. I am referring to the provisions of section 15a.

Mr. BENTON. I am very sorry, but I did not catch what you said.

Mr. MAPES. How much do you think your association is influenced in its judgment by the desire not to be bound or limited by any such standard but to have a free hand in fixing rates? I suppose that that is not a subject which has been discussed?

Mr. BENTON. I never have heard any discussion of it in that connection. Personally, I do not believe it applies at all, because so far as State commissions have any jurisdiction over rates they have it independently of any legislation of Congress. The only way that Congress affects them is when it comes along by some section in the law and grants power to the Interstate Commerce Commission to enter the field as an incident to regulation of interstate rates.

The main interest of the State commissions, aside from the desire to have a general body of law which is fair alike to the carriers and public, is not to be confronted with statutory rules when trying cases before the Interstate Commerce Commission, which give a handicap to the carriers.

Mr. MAPES. I do not care to ask any other questions, Mr. Chairman.

I would like to join the chairman in the sentiments that he expressed as to your presentation of your case.

Mr. BENTON. I thank you.

Mr. MAPES. Your statement has been most interesting and illuminating to me.

Mr. BENTON. Thank you very much.

The CHAIRMAN. We are very much obliged to you, Mr. Benton.

Mr. BURTNESS. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Yes; Mr. Burtness.

Mr. BURTNESS. Who are, in fact, the owners of the funds now in the hands of the Treasury, hands of the Government, which have been collected under the excess-profits provisions of section 15a?

Mr. BENTON. My offhand judgment about that, after such consideration as I have given it incidentally, is that the Attorney General of the United States is right, that it is a fund held by the commission in trust for the purposes provided by the act—that it is not a Government-owned fund.

Mr. BURTNESS. So that, really, the equitable interest in it belongs to the beneficiary, whoever it is?

Mr. BENTON. Who are the people of the United States?

Mr. BURTNESS. The beneficiaries—well, are they the people of the United States? Are they the general public, or are they just a portion of the public?

Mr. BENTON. I think that they are the people of the United States, and that the fund exists for their benefit through the administration of the fund, according to section 15a, in aid of the transportation system.

Mr. BURTNESS. Undoubtedly the theory is that the administration of the fund should be in the public interest. I concede that, of course. But as to whom the trust is to be used for to bring such benefit, just who are they? Who are they, in your opinion? And if they are anyone, any individual carrier, or anything or anyone specific, that is what I want to know. What is bothering me is the real fundamental right that Congress has now to come in and say, "Well, we are going to take that fund and give it back to the carriers from which it was collected."

Your argument, of course, appeals to me very much in so far as the practical situation is concerned, but I confess I am not entirely clear as to my moral or equitable right to vote for a proposition which would turn over a fund, wisely or unwisely set up, on the theory that it was to benefit a certain type of railroads, possible, but in the general public interest.

I am not just clear what moral or legal right, or equitable right, we have to direct that those funds be paid back to the carriers from whom we directly collected it.

Mr. BENTON. Mr. Burtness, I would not attempt to argue with you on a question of law, nor can I direct your investigation of that particular question.

I will say that doubt never occurred to me that Congress, representing the people of the United States, might direct that this fund, which was to be expended for the general public interest, but which has not proved to be useful, might be returned to the roads which produced it.

Mr. HUDDLESTON. Mr. Burtness, may I read you an extract from the opinion of the court in the Dayton-Goose Creek Railway case, 263 United States, page 484?

Mr. BURTNESS. Yes; Mr. Huddleston.

Mr. HUDDLESTON. The court say:

We have been greatly pressed with the argument that the cutting down of income actually received by the carrier for its service to a so-called fair return is a plain appropriation of its property without any compensation, that the income it receives for the use of its property is as much protected by the fifth amendment as the property itself.

Then, the court say:

The statute declares the carrier to be only a trustee for the excess over a fair return received by it. Though in its possession, the excess never becomes its property, and it accepts custody of the product of all of the rates with this understanding. It is clear, therefore, that the carrier never has such a title to the excess as to render the recapture of it by the Government a taking without due process.

The court further say:

The excess caused by the discrepancy between the standard of reasonableness for the shipper and that for the carrier, due to the necessity of maintaining uniform rates to be charged the shippers, may properly be appropriated by the Government for public uses because the appropriation takes away nothing which equitably belongs either to the shipper or to the carrier.

Mr. BURTNESS. Yes; I can follow that reasoning, but there is this further proposition in it: Congress has already provided this fund, theoretically, at least, for the benefit of some specific purposes. Now, does that beneficiary, by the provisions of section 15a have any interest therein so that we should at least hesitate very greatly in depriving them of that which we have once established?

Mr. BENTON. Mr. Burtness, it may not be in the slightest degree enlightening in solving that question, but I suggest a consideration of this inquiry: First, directing attention to the fact that the fund is placed in the hands of the commission under the law, as it stands now, to be loaned or to be used in equipment, no title to the funds going to any road, but being used to benefit the transportation system of the United States.

Assuming it to be a trust fund, is it not within the discretion of Congress to say that this trust fund, which was created for the benefit of the transportation system of the United States, can be best used by remission to those carriers through whose service it was earned for the benefit of those lines in the interest of the people of the United States?

Mr. BURTNESS. Probably so. I presume it reverts eventually to what is practicable, but, let me ask you this: In your opinion, have the rates tended to be higher since the enactment of the transportation act, because of the excess-profits provisions, because of the recapture clause?

Mr. BENTON. Mr. Burtness, I think in *ex parte* 74 in 1920, the increases were probably greater than they would have been had the commission not been under what was then interpreted as a command of Congress to provide 6 per cent upon the aggregate value of all roads, but since that attempt to secure the return broke down, and the commission found that it could not carry out what the carriers claimed was the command of Congress, I think the commission has been fixing rates on a just and reasonable basis, and has been placing an interpretation upon section 15a which has made section 1 and its standard dominant, which requires just and reasonable rates.

Mr. BURTNESS. I appreciate your answer, but I think that you have misunderstood my question, although I am glad that you made the statement that you did with reference to the general provisions of section 15a; but my question was limited as to whether or not in your opinion there has been a tendency to make the rates higher because of the recapture provision, aside entirely from the mandate providing for earnings on the valuation of the property.

Mr. BENTON. I do not think the recapture provision has had the slightest bearing in the commission's mind upon the level at which it would fix the rates.

Mr. BURTNESS. Of course, if that is true, the shippers would have no complaint to make if we turned the money back, but if the shippers had, in fact, paid for it and the carriers had made more during these years than they otherwise would have made, there

might be a serious question as to whom this money should be returned to.

On your conclusions, I do not think that there would be any such question.

Mr. BENTON. Personally, you are asking for my opinion?

Mr. BURTNESS. Yes.

Mr. BENTON. In the last analysis, that is a guess I do not know, but this would be my guess, that the commission, up until the Dayton-Goose Creek case was decided, was very doubtful about the constitutionality of the recapture provisions anyway, and that at no time before or since that decision have the recapture provisions influenced the level of rates at all.

Mr. BURTNESS. Just one question with reference to H. R. 7117. You have raised objection to the use of one of these clauses. I want to ask you whether everything that ought to be in the bill is not found in clause number 3.

The CHAIRMAN. Will you read that, Mr. Burtness, so that we can all have it before us?

Mr. BENTON. That is the one.

The CHAIRMAN. Let Mr. Burtness read it, and then we will have it before us, and can understand his question better.

Mr. BURTNESS. So that that clause of section 15a of H. R. 7117 would read substantially as follows:

In the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, to the necessity, in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service and the meeting and providing for the transportation needs of the public.

Is that language alone broad enough to cover not only all constitutional requirements but to cover also, in a practical way, all of the needs of the carriers as well as covering, in a way that is fair, the needs of the public?

Mr. MILLIGAN. I think that probably Mr. Benton covered that with an amendment that I understand he offered.

Mr. BURTNESS. I think that you have him confused with Mr. Fulbright. Mr. Fulbright offered an amendment.

Mr. MILLIGAN. Maybe it was.

Mr. BENTON. I did not present any amendment. I did say we were in favor of H. R. 7117 with some amendment.

Mr. BURTNESS. Of course, you object to one of these clauses very strenuously.

Mr. BENTON. Yes.

Mr. BURTNESS. Now, I am asking whether the retention simply of clause 3 would not substantially meet your views.

Mr. BENTON. It would. I am satisfied that that would meet the views which I have been presenting here. I have indicated that. The particular objections which I have been making are to 1 and 2, and I think that you must eliminate 1 and 2 to meet those objections.

Mr. BURTNESS. Do you think that there is anything not covered in clause 3 that ought to be covered?

Mr. BENTON. Mr. Burtness, my opinion is that it is not necessary to do any more than repeal section 15a.

Mr. BURTNESS. I understand that.



Mr. BENTON. And that anything that you put in place of section 15a would be for the purpose of reassuring the timid.

Mr. BURNES. That is all.

The CHAIRMAN. Mr. Shallenberger, you wanted to ask some questions.

Mr. SHALLENBERGER. No; he has covered my questions, Mr. Chairman.

The CHAIRMAN. We are very much obliged to you, Mr. Benton.

Mr. BENTON. Thank you, Mr. Chairman.

#### FOREIGN RAILWAY RATES

It is interesting to note that in this period of world-wide depression, when traffic in all countries has diminished, with resultant diminution of railway revenues, in not one of the principal countries of Europe have those who are responsible for railway management appeared to consider it wise to attempt to increase railway rates. This is true not only in those countries where railroads are privately owned but in those countries where they are publicly owned, and where no impediment to an immediate increase in rates exists.

Most significant of all is the attitude of the English railroads, especially in view of the peculiar provisions of the English law, which expressly command the regulatory tribunal to make any adjustment necessary to produce a certain prescribed return. In this respect the English law plainly provides what the carriers have constantly argued section 15a should be construed as providing. It provides a mathematical rule for determining rates.

Under the railways act, 1921 (11 and 12 Geo. 5, ch. 55), the railways of Great Britain were consolidated into four systems. The act provided that standard revenues for each one of the amalgamated systems should be established by the railway rates tribunal, and that standard charges for railway service should be put into effect, designed to produce those standard revenues. The act further provided that the rates tribunal should from year to year review these standard charges, and make such changes therein as in its opinion should be necessary to make the revenues earned conform to the standard revenues prescribed under the act.

The sections which contain these provisions are of particular interest because they bear internal evidence of having been influenced in their form by section 15a, enacted in this country as a part of transportation act, 1920—the year preceding the passage of the English act. We quote those sections in part:

"58. (1) The charges to be fixed in the first instance for each amalgamated company shall be such as will, together with the other sources of revenue, in the opinion of the rates tribunal, so far as practicable yield, with efficient and economical working and management, an annual net revenue (hereinafter referred to as the standard revenue) equivalent to the aggregate net revenues in the year 1913 of the constituent companies and the subsidiary companies absorbed by the amalgamated company, together with— \* \* \*

"59. (1) The rates tribunal shall review the standard charges and exceptional charges of each amalgamated company at the end of the first complete financial year after the appointed day, or, if the appointed day is the first day of January in any year, at the end of that year, and, unless directions are given by the minister to the contrary in manner hereinafter appearing, at the end of each succeeding year, and the review shall be made on the experience of the operation of those charges for the period during which the standard charges have been in operation, or, if that period is more than three years, then on the experience of the operation of those charges during the preceding three years. \* \* \*

"(4) If on any such review the rates tribunal find that the net revenue or the average annual net revenue obtained by the company during the period on the experience of which the review is based is less than the standard revenue of the company, with such allowance (if any) as appears to the tribunal necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the date upon which the standard charges were fixed in the first instance, and that the deficiency is not due to lack of efficiency or economy in the manage-

ment, the tribunal shall, unless in their opinion owing to change of circumstances the deficiency is not likely to continue, make such modifications in all or any of the standard charges and such a corresponding general modification of the exceptional charges of the company as they may think necessary to enable the company to earn the standard revenue with such allowance (if any) as aforesaid."

The standard revenues for the four amalgamated systems were established by the rates tribunal and standard charges were settled, designed to produce such revenues, which came into effect January 1, 1928.

Acting under section 59, these standard charges were reviewed by the rates tribunal in 1929, 1930, and 1931. The judgment of the rates tribunal upon the first review was rendered June 4, 1929. Great Britain was suffering from the present depression, which had not then reached this country. The tribunal found that the standard revenues were not being earned. The following is quoted from the judgment:

"These books showed deficiencies amounting to £9,057,732, as compared with the aggregate of the standard revenues fixed by us for the four companies. \* \* \*

"In view of the above deficiencies and with the object of defining the main issues before our public sitting, we requested the companies to inform us whether they proposed to apply for any modifications in charges.

"On the 18th of April they were able to inform us that it was not their intention to put forward any proposals for a general increase of charges at the present time, and that in coming to that decision the companies had had regard to various factors in the economic position of the country, and were doubtful whether a general increase in charges at the present time would result in any material improvement in their financial position. \* \* \*

"This declaration of the railway companies, by removing the public apprehension that a general increase might be sought, removed with it from the majority of traders a desire to be heard at the public sitting otherwise than so far as necessary in support of the railways' contention. It was true that under section 59 the duty still remained with the tribunal of holding the review and in events therein mentioned of making such modifications, either upwards or downwards, as were necessary to enable the companies to earn the standard revenues. At the same time it seems to have been felt that, if the attitude of the railways was indorsed, as it naturally would be, by the traders as a whole, the risk of an increase would be negligible. \* \* \*

"Having taken into consideration the evidence laid before us, and having considered all relevant statements and documents and made the review prescribed by the act, we find: \* \* \*

"3. That the above deficiencies were not due to lack of efficiency or economy in the management.

"4. That deficiencies not necessarily as large but substantial in character are likely to continue.

"5. That, nothing appearing upon our review which established that under present conditions any modification or modifications would enable the companies to earn their respective standard revenues, no such modifications are necessary, and we make none."

The judgment upon the second review was rendered June 5, 1930. The tribunal found aggregate deficiencies in revenues of 5,376,425 pounds. The following is quoted from the judgment:

"We find that deficiencies not necessarily as large but substantial in character are likely to continue.

"As the result of the foregoing findings it becomes our duty in the words of section 59 (4) to make such modifications in all or any of the standard charges and such a corresponding general modification of the exceptional charges of the company as we may think necessary to enable the company to earn the standard revenue. \* \* \*

"We should have welcomed evidence from all quarters, but the only evidence which in fact we received upon this matter of modifying charges to enable the companies to earn their standard revenue was on behalf of the companies through Mr. Wood:

"(a) That after a full consideration of the position and having regard to the industrial and economic conditions of the country, they are doubtful whether a general increase of charges at the present time would result in any material improvement in their financial position.

"(b) That an increase of passenger fares would not result in an increase of net revenue. That their present policy is to meet road competition by offering better and cheaper facilities for passengers. That this policy has had the effect of increasing the receipts beyond what would otherwise have been obtained and should be continued. That an increase of 5 per cent in passenger fares would discourage traffic and reduce the net revenue. That the position of the freighters would not be better, because an increase of passenger fares would reduce the net revenue of the companies and cause a larger deficiency.

"(c) That with regard to merchandise rates where any alternative means of transport exist it is not possible at the present moment to touch these rates, and that with regard to merchandise (such as coal, iron, and steel) which is tied to the railway an increase of rates would be apt to deter the possibility of a revival in those trades, which have been hit heavily."

The tribunal accordingly found no modification in the standard charges to be "necessary."

The third review showed a worse situation than the first. The judgment was rendered May 27, 1931. The deficit found by the tribunal was 13,124,000 pounds. The following is quoted from the judgment:

"The situation placed before us was that the wave of bad trade that developed in the last three quarters of 1930, and which assumed dimensions that no one anticipated at the beginning of the year, involved such heavy losses in gross receipts that it was quite impossible to meet them by any reduction in expenses, although everything possible was done by decreasing train mileage, particularly goods-train mileage, and by every other method of cutting down expenses. But that the decreases were of a magnitude which it was quite impossible to meet by any economies that could be effected."

The position taken by the railway companies was stated in a letter sent out in the judgment, as follows:

"With reference to your letter of the 30th March, and reply to the request of the tribunal that the railway companies should state whether they desire to propose any modifications in the existing standard and exceptional charges at the forthcoming review, I am directed by my committee to say that, as none of the companies has attained its standard revenue, the provisions of section 59 (4) of the railways act, 1921, would appear to impose upon the tribunal the duty of making such modifications in the standard and exceptional charges as they may think necessary to enable the standard revenue to be earned. The companies will afford every assistance in their power to the tribunal in the discharge of this duty, but after a full consideration of the position and having regard to the industrial and economic conditions of the country they are still doubtful whether a general increase of charges at the present time would result in any material improvement in their financial position, while the position of the companies' revenues is not such as to enable them to propose reductions.

"The companies do not, therefore, desire to lay any proposals before the tribunal for a general modification of charges, but I am instructed to emphasize that this must not be taken to preclude them from bringing forward proposals for increasing charges when in their view circumstances justify such a course."

The tribunal accordingly again reached the conclusion that no modification of charges was "necessary," and made none.

**STATEMENT OF S. T. BLEDSOE, CHAIRMAN OF THE EXECUTIVE COMMITTEE AND GENERAL COUNSEL OF THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO.**

The CHAIRMAN. Mr. Bledsoe, you have 25 minutes. You can get started.

Mr. BLEDSOE. Thank you. I do not think that I can finish in 25 minutes, but it is not my purpose to take more than an hour at the most.

The CHAIRMAN. All right, Mr. Bledsoe, you may proceed. The committee will be in order. Very valuable time is being taken up now unnecessarily.

Proceed, Mr. Bledsoe.

Mr. BLEDSOE. I am chairman of the executive committee and general counsel of Atchison, Topeka & Santa Fe Railway Co.

My experience in connection with railroad problems began at least with the enactment of the valuation act in 1913. I have been charged with the responsibility for our company in connection with valuation matters, since the enactment of that act. Prior to that time I had had something to do with valuations, so far as State valuations were involved.

I have represented our company in all matters relating to the valuation of its properties by the Interstate Commerce Commission under section 19a of the valuation act. I have been reasonably familiar with what the commission has done in respect to those matters.

I am appearing here at the instance of the Association of Railway Executives, but what I say is my own judgment in respect to all of the matters with which I will deal. It may not always be in accord with what the association's judgment is in respect to some of the matters. Where it is not, I will endeavor to indicate that fact.

I wish in the beginning, if I may, to suggest, Mr. Chairman, that I have prepared a memorandum which is more to talk from than to follow literally, and that it will not interfere with me to have you interrupt me at any time that you desire to ask any questions, or for any member of the committee who has questions that they may desire to ask. I am here in an endeavor to give the committee such information as, from my viewpoint, will be valuable, and I want also to be able to give such information as any member of the committee thinks will be of service in dealing with the problem.

I wish to express my appreciation of the fairness with which Commissioner Eastman both on his own behalf and on behalf of the Interstate Commerce Commission, Mr. Fulbright on behalf of the National Industrial Traffic League, and Mr. Benton on behalf of the State railroad commissions, have dealt with the repeal of the recapture clause of section 15a, and the several propositions which they have discussed before the committee. There are some things they have said with which I do not agree, but I do agree with the recommendations made by them so far as the retroactive repeal of the recapture provisions of section 15a, and so far as they have objected to the substitution of the so-called rate base found in House bill 7116 for section 15a.

In my judgment, the public interest—

Mr. MAPES. May I ask you right there, are you expressing the judgment of the railway executives, or your own, in that connection?

Mr. BLEDSOE. I understand that to be the judgment of a great majority, if not all, of the railway executives, as to those two positions, to be the judgment of the great majority, if not all, of the railway executives, and I will limit my discussion to those two questions.

In my judgment, the public interest and fairness to the railroads require the unconditional and retroactive repeal of the recapture provisions of section 15a.

I, therefore, concur in the main with the statements submitted by the above-mentioned gentlemen in support of the retroactive re-

peal of such recapture provisions. There are some statements, however, made by each of these gentlemen with which I find myself unable to agree, but this does not prevent my heartily concurring in their conclusions, that there should be a retroactive repeal of the recapture provisions of section 15a.

The justification for the enactment of the recapture provisions was that the commission in the exercise of its power to prescribe just and reasonable rates would so adjust the general level of rates that the carriers as a whole, or by groups, under honest, efficient, and economical management and reasonable maintenance expenditures, would earn an aggregate annual net railway operating income equal to a fair return upon the aggregate value of the property held by the carriers and used by them in the service of transportation. It was assumed that the commission would prescribe rates under which the carriers for the country as a whole, or by groups, would earn the fair return fixed in the act in the first instance, and later by the commission, upon the value of their properties employed in the transportation service, and that as a result of making rates which would yield a fair return by groups a number of the carriers would receive a return in excess of 6 per cent per annum upon the value of their properties employed in the transportation service.

The commission has not since the enactment of the recapture provision prescribed rates which have permitted the carriers as a whole to earn in any year the fair return fixed either by the statute or by the commission. The following tables show the rate of return earned by the carriers as a whole upon the value found by the commission of the properties of the carriers as a whole in ex parte 74, plus net expenditures for additional properties since the date of said decision, and the amount in each year from 1921 to 1931, inclusive, by which the carriers have failed to earn 5¾ per cent upon such value of their properties.

Without going through that statement in detail, it will be observed that for the year 1921 the rate of return was 3.13 per cent; for the year 1922, 3.92 per cent; for the year 1923, 4.76 per cent; for the year 1924, 4.63 per cent; for the year 1925, 5.19 per cent; for the year 1926; 5.45 per cent; for the year 1927, 4.67 per cent; for the year 1928, 5.02 per cent; for the year 1929, 5.22 per cent; for the year 1930, 3.54 per cent; and for the year 1931, for part of which we have estimates, it is 2.17 per cent.

The amount by which the carriers failed to earn 5¾ per cent is shown on the second chart, the second part of that table, and without dealing with the years, for the years 1921 to 1931, inclusive, the carriers failed by \$3,455,465,960 to earn 5¾ per cent upon a value found by the Interstate Commerce Commission, in ex parte 74, plus net additions and betterments made to the properties since that time, and I would like to have this statement, which constitutes page 3 of the mimeographed statement appear in the reporter's notes in full, so that I will not have to read it.

The CHAIRMAN. All right, it may go in the record.

(The statement above referred to is as follows:)

Rate of return on property, based on findings of Interstate Commerce Commission in Ex Parte 74, plus net additions and betterments—Class I steam roads in the United States

Calendar year	Investment in road and equipment		Ex parte 74 findings, plus net additions and betterments	Net railway operating income	
	Amount	Increase over prior period		Amount	Rate of return
	1	2	3	4	5 <sup>1</sup>
					Per cent
1919.....	\$19,460,516,145		\$18,362,616,190		
1921.....	20,338,443,697	\$877,927,552	19,240,543,742	\$602,606,042	3.13
1922.....	20,618,700,426	280,256,729	19,520,800,471	766,078,935	3.92
1923.....	21,439,549,661	820,849,235	20,341,640,706	968,983,741	4.76
1924.....	22,175,572,273	736,022,612	21,077,672,318	975,905,652	4.63
1925.....	22,740,283,846	564,711,573	21,642,383,891	1,123,307,447	5.19
1926.....	23,111,372,355	371,088,490	22,313,472,390	1,215,053,258	5.45
1927.....	24,012,691,241	901,318,806	22,914,791,286	1,069,695,657	4.67
1928.....	24,480,757,757	468,066,516	23,382,857,832	1,173,427,104	5.02
1929.....	25,062,399,116	581,641,329	23,964,499,161	1,251,697,927	5.22
1930.....	25,664,656,010	602,256,894	24,566,756,055	868,878,792	3.54
1931.....				532,000,000	2.17

<sup>1</sup> Equals 4 divided by 3.

<sup>2</sup> Partially estimated to include returns for month of December, 1931.

Shortage of earnings under 5¾ per cent on property based on findings of Interstate Commerce Commission in Ex Parte 74, plus net additions and betterments—Class I steam roads in the United States

Calendar year	Ex parte 74 findings, plus net additions and betterments		Net railway operating income	
	Amount	5¾ per cent	Actual	Shortage under 5¾ per cent
1921.....	\$19,240,543,742	\$1,106,331,265	\$602,606,042	\$503,725,223
1922.....	19,520,800,471	1,122,446,027	766,078,935	356,367,092
1923.....	20,341,640,706	1,169,644,858	968,983,741	200,661,117
1924.....	21,077,672,318	1,211,966,158	975,905,652	236,060,506
1925.....	21,642,383,891	1,244,437,074	1,123,307,447	121,129,627
1926.....	22,313,472,390	1,283,024,662	1,215,053,258	67,971,404
1927.....	22,914,791,286	1,317,600,499	1,069,695,657	247,904,842
1928.....	23,382,857,832	1,344,514,324	1,173,427,104	171,087,220
1929.....	23,964,499,161	1,377,958,702	1,251,697,927	126,260,775
1930.....	24,566,756,055	1,412,588,473	868,878,792	543,706,681
1931.....			532,000,000	880,588,473
Total, 11 years.....				3,455,465,960

<sup>1</sup> Partially estimated to include returns for month of December, 1931.

NOTE.—Investment data for 1931 is not yet available. The rate of return and shortage under 5¾ per cent is computed on the base shown for prior year.

The CHAIRMAN. Mr. Bledsoe, before you leave that, I understood you to make the statement there that during these years, the carriers failed by something like \$3,000,000,000, to earn 5¾ per cent.

Mr. BLEDSOE. Yes, sir; failed by more than that amount to receive what the Interstate Commerce Commission said was a fair return.

The CHAIRMAN. Do you think it was general business conditions, or more the rates granted by the Interstate Commerce Commission that brought about this deficit?

Mr. BLEDSOE. Mr. Chairman, in some years it was business conditions, and in other years it was business conditions and in addition and in other years, as indicated, it was rates.



The CHAIRMAN. What about, Mr. Bledsoe, the well-circumstanced, the well-located, and the well-financed roads during that time? Did they do pretty well, taking the thing out of the mass?

Mr. BLEDSOE. During the most of the years they did fairly well. Of course, it is hard to answer that question. I have grouped the roads so as to be able to state only with reference to the results as a whole.

The CHAIRMAN. No.

Mr. BLEDSOE. But I have an analysis that I have had made, a statement of our own road, which I think is generally considered a fairly prosperous property, at least, has been until recently. We would not claim to be in that class now. That shows the effect, year by year, upon it as to whether it was earning a fair return upon its investment in road and equipment, which is not very far different from what the valuation of the property would be, I think, for recapture purposes. In our judgment it is somewhat less.

The CHAIRMAN. But you were never in favor of this section?

Mr. BLEDSOE. No. I do not believe that I appeared before this committee, but I did appear before the committee of the Senate in 1924 and stated that, in my judgment, the act contemplated the commission should make reasonable rates, in the exercise of its judgment, which would yield a fair return. In other words, section 15a has never required the making of unreasonable rates in order to afford the carrier's a fair return.

That is not the general opinion of all railway counsel. There has been a considerable difference of opinion in respect to that, but that has been my position in respect to the matter, and I have never departed from it.

The CHAIRMAN. I think that has been the interpretation of what should have been the law by those of us who were here at the time and had something to do with it.

Mr. BLEDSOE. I think, Mr. Chairman, the matter of the effect of section 15a, shortly after the enactment of the law, became a political question, unfortunately, and through the Central West there were constant charges that Congress had enacted a law guaranteeing the carriers 6 per cent return upon their property, regardless of what happened to the rate payers, and a sentiment grew up that was very antagonistic to the act, based on those opinions and charges, which were made in political campaigns and were not judicial interpretations of the language used in the bill.

The assumptions, therefore, upon which the enactment of the act was justified, have never been realized and have ceased to be even assumptions.

The result of the operation of the recapture clause of section 15a has been that some roads have, in a few years, when a large volume of traffic moved, earned in excess of six per cent upon the value of their properties employed in the transportation service, although it is doubtful if any carrier has earned a fair return upon the value of its property employed in the transportation service for the entire period during which the recapture provisions have been in effect. The carriers, as a whole, have failed by perhaps more than three billion dollars to earn the fair return prescribed by the act and by the commission, if the entire period be considered.

The fairness and justice of the operation of the recapture provisions can not be tested without including the entire period during which such provisions have been in effect; to wit, from the period beginning March 1 or September 1, 1920, as the case may be, and ending December 31, 1931.

The roads which accepted the guaranty for the six months following the Federal control, had their recapture liability determined from September 1. Those that did not is determined from March 1, and it is for that reason that I am making a distinction between the two periods.

If a carrier has failed to earn a fair return on the value of its property employed in the transportation service for this period, it is manifestly unfair to further increase its deficit below a fair return by requiring the payment by it of one-half of its excess income in some particular year in which it may have earned something in excess of a fair return.

On May 3, 1927, the commission valued the properties of the Atchison, Topeka & Santa Fe Railway System Lines, under section 19a of the valuation act as of June 30, 1916, at 1914 prices. I should add there, however, the land was valued at 1916 prices, the date of valuation. The commission has indicated that of the years 1920 to 1931, inclusive, there is sufficient reason to believe that the Atchison system lines received excess income in the years 1920, 1926, and 1929 to justify the valuing of those properties for such years, in order to determine whether they earned excess incomes.

In the absence of valuation of such properties for the years involved, I have had a computation made of the net railway-operating income of the Atchison system lines and a statement of their investment in road and equipment, as policed by the Interstate Commerce Commission for the last four months of 1920 and for the years 1921 to 1931, inclusive.

For the 11 years and 4 months, this computation discloses that in only 2 years of such period did the Atchison system lines have excess income, and that in those two years the aggregate of such excess income was \$6,364,295; and that for the entire period of 11 years and 4 months, the Atchison system lines failed by \$127,191,741 to earn 6 per cent upon the investment in their road and equipment. If the Atchison system lines were required to pay one-half of such excess for the two years in which it had excess earnings, the amount by which they will have failed to earn a fair return for the entire period will be increased to \$130,374,204.

Commissioner Eastman stated that computing excess income on an annual basis was very unfair to the carriers and indicated that not less than a 3-year period should be used. As a matter of fact, fat and lean years for the railroads run somewhat in cycles and a 3-year period would not sufficiently eliminate the injustice effected by the use of the 1-year period. If section 15a is not repealed retroactively, then the entire 11 years and 4 months period should be averaged for the purpose of ascertaining excess income.

The expenses incurred by the Atchison system lines in connection with the valuation of their properties for the years 1921 to 1931, inclusive, the major portion of which was incurred in connection with proposed recapture, aggregates \$4,944,717.99. Such expenses apparently reached their maximum in the year 1929 when the Atchi-

son system lines paid out for valuation expenses \$773,489.72. For the year 1930, the cost was \$680,457.87, and for 1931, approximately \$500,000, and the beginning of the end of such expenses is not yet in sight, unless the recapture clauses of section 15a are retroactively repealed.

I am not blaming the commission for requiring such expenditures. The necessity therefor is imposed by section 15a of the interstate commerce act.

And, I may add that such expense is incurred very largely in making inventories of the properties. Now, our properties were inventoried, every tie, every rail, every yard of earth, as of June 30, 1916, but we have about 13,000 miles of railroad, and the matter of keeping and reporting the changes in that property, as to items retired, new items installed, the cost of the property retired, and the cost of the property installed, is an enormous burden.

And, so long as the valuation act remains as it is, it is the duty of the commission to require us to do that, and it is an unnecessary burden both upon the railroads and the shippers.

Mr. SHALLENBERGER. Do you charge depreciation in addition to the other items, that you mentioned there, to determine the value?

Mr. BLEDSOE. Do you mean in computing the rates of return?

Mr. SHALLENBERGER. To determine the value of your road, for any purpose.

Mr. BLEDSOE. We have never charged depreciation upon the roadway and structures. We have since 1907 charged depreciation on equipment, but we have believed that the better way to handle the matter of the maintenance of roadway was by making the repairs to the property when required.

Mr. SHALLENBERGER. Does the commission require depreciation charges of the railroads?

Mr. BLEDSOE. The commission—

Mr. SHALLENBERGER. In connection with what you allowed?

Mr. BLEDSOE. The commission's order is optional as to what it requires at the present time, but I think it has interpreted that order so as to require all railroads to charge depreciation on equipment but leaving to the railroads their own discretion as to what they will do in respect to fixed properties, and for a long period of time, many of the railroads made nominal charges on account of depreciation for equipment. Our custom has been to endeavor to charge depreciation on the basis of the life of the property, and when the commission valued our properties, the difference between the amount the commission attributed to depreciation on equipment and the amount that we attributed was relatively small, and that arose, in some respects, out of the fact that we did not begin the practice of charging depreciation until 1907, and there had to be an adjustment as to the items of equipment as they went out of service that had not been fully depreciated, because the rule had not been in effect during the entire life of the equipment.

Mr. SHALLENBERGER. Depreciation has not been considered because of lack of earnings of the railroads?

Mr. BLEDSOE. No.

Mr. SHALLENBERGER. Then you did not attempt to consider depreciation in accordance with the earnings. That is not taken into consideration?

Mr. BLEDSOE. No, Mr. Shallenberger.

I have always thought, Mr. Chairman, that as the commission deducts depreciation in determining value for recapture purposes, the amount which they deduct ought to be added to operating expenses the year in which the deduction is made.

For instance, those of us who are connected with the Santa Fe take some pride in the fact that our property is well maintained in good serviceable condition. In fact, we have sometimes been criticized for maintaining it too well. But the shippers never criticize us, because they want service, prompt service, and want to know when we accept a load that we are going to deliver it, without delay or derailment, or anything happening to it on the way to market, and that it is going to arrive on time.

Mr. SHALLENBERGER. If I might say, what I had in mind was, I understand that where you have improved your right of way you have added to your capital investment. Have you done that?

Mr. BLEDSOE. The maintenance charges are charges to operating expenses.

Mr. SHALLENBERGER. Does it add to the value of the road?

Mr. BLEDSOE. No. But if we raise a grade, or increase the thickness of the ballast, or widen an embankment, the cost is charged to capital and not to maintenance. The commission in valuing the Santa Fe properties deducted about 20 per cent from the cost of reproduction new, and we thought this was excessive. That is one of the principal controversies we have with the commission. So far as I know the commission did not add to operating expenses the amount it deducted as depreciation in finding value.

The CHAIRMAN. Mr. Bledsoe, we will have to ask you to come back in the morning.

The committee will stand adjourned until 10 o'clock to-morrow morning.

(Thereupon, at 11.47 o'clock a. m., the committee took a recess until 10 o'clock a. m. of the following morning, Friday, January 29, 1932.)

## RAILROAD LEGISLATION

FRIDAY, JANUARY 29, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., Hon. Sam Rayburn (chairman) presiding.

The CHAIRMAN. We will proceed, gentleman. Mr. Bledsoe, you may continue.

### STATEMENT OF S. T. BLEDSOE—Continued

Mr. BLEDSOE. Mr. Chairman, on yesterday afternoon, while answering some questions, I overlooked reading the second paragraph of my memorandum on page 4. I have made a slight change in it, in the interest of accuracy, and it will read as changed:

The result of the operation of the recapture clauses of section 15a has been that some roads have, in a few years, when a large volume of traffic moved, earned in excess of 6 per cent upon the value of their properties employed in the transportation service, but very few class 1 carriers have earned a fair return upon the value of their property employed in the transportation service for the entire period during which the recapture provisions have been in effect. The carriers as a whole have failed by perhaps more than \$3,000,000,000 to earn the fair return prescribed by the act and by the commission, if the entire period be considered.

Going back to page 3 and the tables set forth on that page, I have had some additional computations made in order to make the results more easily understandable. The table at the top shows the rate of return for each year and I have had that rate computed so as to ascertain the average for the entire period, which is 4.33 per cent.

The CHAIRMAN. That is for the whole time?

Mr. BLEDSOE. For the whole time; yes, sir.

Mr. GARBER. Do you mean to say that the average rate through that period is the figure you have just given?

Mr. BLEDSOE. Sir?

Mr. GARBER. Do you mean to say that 4.33 per cent is the average rate during that period?

Mr. BLEDSOE. Yes, sir. That is the weighted average, taking the average valuation and dividing it into the average earnings for the period. That gives rather a concise showing of the whole situation, instead of having to follow it through the various years.

The CHAIRMAN. A value arrived at how?

Mr. BLEDSOE. The value is that found by the commission in *ex parte* 74, which was an application for increase of rates following the enactment of the transportation act in 1920, plus the net additions and betterments made to the property since that date. The



additions and betterments means deducting retirements and adding betterments or extensions or new construction, whichever it may be.

The CHAIRMAN. That is the difference between what you take out and what you put in, is that right?

Mr. BLEDSOE. Yes, sir.

The CHAIRMAN. Taking all that is put in and counting nothing that is taken out?

Mr. BLEDSOE. No. That is adding all we put in and deducting all that is taken out.

Mr. HUDDLESTON. May I ask whether it takes depreciation into account?

Mr. BLEDSOE. It does not take into account depreciation except in so far as the commission may have taken depreciation into account in finding its value in *Ex parte* 74. There is no statement as to the extent to which the commission deducted depreciation in that case, if at all.

Mr. MAPES. I would like to ask you a question, and perhaps this would be as good a place as any other to ask it. As I understood the statement of Mr. Benton, it was to the effect that in order to make this recapture clause workable, it would be necessary for the commission to make a new valuation of the roads or fix a valuation on them every year. Is that your understanding?

Mr. BLEDSOE. The requirement evidently is that the commission must prepare a separate valuation for each carrier for every year where there is sufficient evidence to indicate that there may be a sum subject to recapture as to that particular road in that particular year.

Mr. MAPES. Is there enough change in the value of roads from year to year to make that a very big task?

Mr. BLEDSOE. Well, taking my road, I should say that the net expenditures for additions and betterments over the period have averaged probably from thirty to thirty-five million dollars per year. That is an offhand statement. You can look at the table at the top of page 3 and you will find the net expenditures made by the railroads as a whole for each year. For instance, in 1921, the additional expenditures were \$877,927,552. The next year it was relatively small, \$280,256,729, but it would probably average about \$650,000,000 a year, roughly speaking.

Mr. MAPES. Would you think that there would be a likelihood of your road, for example, contesting with the Interstate Commerce Commission the valuation fixed by the commission for each separate year that the commission claims you are subject to this recapture provision?

Mr. BLEDSOE. If the commission adheres to the principles that it applied in the valuation of our properties as of 1916, I do not see how we could avoid it.

Mr. MAPES. So the inference, at least, in Mr. Benton's statement, that the commission might have a contest with each road subject to the recapture provision over the valuation for each year, in your opinion, is correct?

Mr. BLEDSOE. That I would say was a reasonable forecast for what probably would happen. There are many differences of opinion between the commission and the railroads as to what are proper

elements of value and the probative effect to be given to those elements. A little later along I am going to discuss that question.

Mr. MAPES. Even though you contested with the commission for the valuation in one year and had that determined by the court, you still think you would be likely to contest with the commission on another year for this \$35,000,000 additional put into the road, as you have indicated?

Mr. BLEDSOE. The problem is not quite as simple as that, Mr. Mapes. The commission is required to make really a new inventory of our property for each year and a new valuation, and there have been wide fluctuations in prices as between the years in which we are likely to be called upon to pay something on account of recapture. The commission, in my judgment, has never given the probative effect which the law and the Constitution requires it to give to present value, the cost of reproduction new, and this is where one of the principal controversies arises.

I want to say in fairness to the commission that in making our original valuation they invited our representatives to engage in a conference with their representatives for the purpose of trying out what they called the conference plan of valuation. And with our large mileage and so many items that conference lasted over perhaps 18 months or two years. At the end of that time our representatives and the commission's representatives—of course, the commission was not bound; they had a right to disregard it or observe it or not, as they saw fit—arrived at an agreement of the fair reproduction cost of about 85 or 90 per cent of the items involved in the entire inventory, leaving 10 or 15 per cent that were subject to controversy.

We tried our case involving the entire valuation of our system properties in 10 days. I am making that statement to show that I have no desire to litigate and that we have gone just as far as we could to meet every requirement of the commission and the commission has responded so far as the matter of ascertaining the inventories is concerned.

Mr. MAPES. Even though the commission is required to make a new inventory every year, it does not seem to me there would be anything new to put into the inventory except the additions that are made during that year.

Mr. BLEDSOE. Well, there are a good many retirements, and what I am talking about is the net expenditures now.

Mr. MAPES. Let me ask you further this question: You say that the commission has never given the consideration to reconstruction value which you think it ought to give. After the court has laid down more definitely what consideration it ought to give to that feature, would you still think that the roads would contest with the commission every year the reconstruction value of their plant to keep current with the fluctuating economic conditions and the commodity prices?

Mr. BLEDSOE. Mr. Mapes, the trouble is not with the roads; the trouble is with the commission in failing to follow the mandate of the Supreme Court on those questions.

Mr. MAPES. Without locating the trouble, you think that there would be a dispute every year between the commission and the roads,

even after the court had pretty clearly defined what consideration should be given to the reconstruction element?

Mr. BLEDSOE. Yes; that is true, unless the commission changes its attitude; because the Supreme Court has, in *McArdle* against Indianapolis Water Works Co., said specifically that costs incurred years ago and at different levels of prices have little, if any, probative effect in determining present value, and after that decision, the commission went right along and applied the 1914 prices.

Mr. MAPES. Do you think the courts would seriously consider these cases of the roads after it had once laid down pretty clearly what consideration was to be given to the reconstruction cost of the road?

Mr. BLEDSOE. Mr. Mapes, of course, if the commission should follow what the court says in regard to those matters, I think that would end the litigation, at least over that phase of the matter. There are other matters involved, but the valuation in the *O'Fallon* case was made after the decision in the *McArdle* case, and the *McArdle* case was not even mentioned in the *O'Fallon* decision, as I recall it.

Now, the second test is the *Richmond, Fredericksburg & Potomac* case. This is a property constructed many years ago. For the first time, I believe, the commission finds what purports to be original cost for a large property constructed many years ago, which is an estimated original cost, and considers both reproduction cost less depreciation and original cost less depreciation. So far as those of us who analyzed the figures can tell they gave about 60 per cent effect to reproduction cost new and about 40 per cent for original cost. The Supreme Court said that under those circumstances original cost is practically no evidence of value.

Mr. HUDDLESTON. Mr. Bledsoe, I am wondering how it would be possible for a court to state just what weight should be given to any factor; I want to find out if that has been done.

Mr. BLEDSOE. I think it has been done in a number of cases. I think, perhaps, Mr. Huddleston, that the trouble arose over the statement in the *Smyth v. Ames* case, that the valuing authorities—it was the State in that particular case, the State of Nebraska—should give consideration to the original cost, to the expenditures for additions and betterments, and to the present cost of constructing the property.

Mr. HUDDLESTON. To the value of the securities?

Mr. BLEDSOE. To the value of the securities and among other things—

Mr. THOM. The earnings.

Mr. BLEDSOE. The earnings under the proposed rates, of course, which would apply only in a rate case and would not apply here.

Mr. HUDDLESTON. That was a case in which the reasonableness of a rate was being passed upon?

Mr. BLEDSOE. Yes, sir; a schedule of rates.

Mr. HUDDLESTON. Which is somewhat different from a mere valuation case. Assuming that the value is a certain amount, that does not necessarily mean the rate should be a certain rate, because the other factors mentioned by the court in that case must be considered. In short, if everybody agrees that the value is such and such a figure, that is not all that you would consider in passing upon the reasonableness of a rate.

Mr. BLEDSOE. That is true.

Mr. HUDDLESTON. As decided by that case.

Mr. BLEDSOE. Yes.

Mr. HUDDLESTON. I am anxious to know in what cases the court has assumed to say just what weight should be given to any particular factor. I can well understand how the court would say that in a particular case it is obvious that the commission has not given due weight to such and such a factor. Nevertheless, they all are factors, and how are you going to say that 20 per cent should be given to this and 50 per cent to the other and so forth, apportioned all around? I wonder if the court has ever attempted to do that?

Mr. BLEDSOE. The court analyzed, as I recall it, in the *Southwestern Bell Telephone* case (262 U. S. 276) the original cost figures and the cost of reproduction figures and determined that the value that was found did not give adequate effect to the cost of reproduction new.

This resulted in a reversal rather than in a determination of the exact sum and sent the case back to the State commission on the ground that it had failed to give proper effect to cost of reproduction new.

The valuation act, which was drawn by Senator La Follette, was designed to require a disclosure on the face of the valuation itself of the factors that were considered and the probative effect given to each factor in order that the public as well as the railroads might know to what extent cost of reproduction was given effect in determining value and to what extent original cost was given effect. The purpose was to make the decision so that it might be reviewable in the courts at either the instance of the public or the railroads or the shippers or anybody else who felt prejudiced by it.

Now, in the early days the commission concluded its findings with a statement that it had given proper effect to all of the elements of value to be considered in the case; did so apparently on the recommendation of Commissioner Prouty, who said that thereby an immunity might be given to the valuations and they could not be attacked because no particular probative effect had been attributed to any particular class of evidence.

But the Supreme Court in its analysis in the recent valuation cases has found a method of determining by results whether sufficient effect has been given to cost of reproduction new or to any other factor for that matter. The act says the commission must find, first, the original cost; second, the cost of reproduction new, the present value of lands, and then must find as to each of the other elements of value or elements claimed as representing value, the value thereof, if any.

There is this difference between a recapture case and a rate case. In recapture the commission is dealing with a past year, and valuation is as of a fixed date. Trend of prices, in my judgment, cuts no figure. It is the prices existing as of valuation date. Now, in a rate case we are looking to the future. Rates are being made not to be put in effect to-day, but to-morrow, and perhaps for two or three years thereafter. The commission must regard the trend of prices, in a case of that kind, in order to forecast as nearly as it can what the value of the property will be during the period in which the rates may reasonably be expected to be kept in effect.

The CHAIRMAN. Is this your answer to Mr. Huddleston's question, Mr. Bledsoe, that the Supreme Court has gone to the extent of returning these matters on the ground that they have not given sufficient weight—

Mr. BLEDSOE. Consideration.

The CHAIRMAN. Or consideration to certain elements; but the question I thought went to percentages?

Mr. BLEDSOE. The court has never said that a certain percentage of effect shall be given to one thing and a certain percentage to another.

Mr. CROSSER. What do you think would satisfy the court, then, in respect to those elements? Suppose you were the commission and you were trying to meet these numerous requirements of the Supreme Court. What would you do?

Mr. BLEDSOE. I would find cost of reproduction new of the physical properties other than land, present value of land, and that the commission does. I would, if it was reasonably possible, and there had been no change in price levels, find the original cost of the property. I would do so if construction was of approximately the date as of which recapture is involved.

I would give to the cost of reproduction new less depreciation, if any, plus the present value of the land, controlling effect in determining the value of the physical properties, and if it were a property of long-established earnings, solidified, and seasoned, capable of rendering perhaps 50 per cent more service than the property new would be capable of rendering, at less cost, with less damage to shipments in transit, I would find the value to be approximately the cost of reproduction new plus the present value of land.

Mr. CROSSER. If it is a new system, what then?

Mr. BLEDSOE. If it is a new system, I would take the cost of that system. That is, if there had been no change in the level of prices. The reason for finding cost of reproduction new does not arise as long as the same general level of prices prevail that prevailed as of the date of construction of the property.

Mr. CROSSER. What other relative values would you give in the case that you discussed before I asked the last question? What values would you give to the other factors?

Mr. BLEDSOE. I would give, if there had been a change in price levels, so far as physical values are concerned, 100 per cent consideration to the cost of reproduction new less depreciation of the properties other than land and to the present value of the land. As to each individual case I would have to determine what the going value was, as the Supreme Court of the United States has said that must be included. That includes the established business, solidified and seasoned roadbed, adjustment to water, weather, and traffic. I would give that substantial consideration.

State commissions generally prior to the increase in prices gave consideration to the extent of, I think it might be said, from 5 to 15 per cent to those elements of value. I would find a standard for that largely out of the decisions of the State commissions in respect to that.

Mr. CROSSER. So far as valuation is concerned, you are inclined to believe, are you not, as a matter of legal logic, that the whole

question is simply as to what the market value of the property is at the time the value may be?

Mr. BLEDSOE. No; I do not attach any particular importance to the market value of the property, because I do not know any means of obtaining the market value of the property.

Mr. CROSSER. I am assuming, of course, that the market value of the property can be ascertained.

Mr. BLEDSOE. I have tried to follow the Supreme Court of the United States and say that the cost of reproduction new less depreciation, plus present value of land—that is the language of the court—fairly measures the physical value of the property as of the date of valuation. If there has been no change in the level of prices since the property was constructed, the original cost of the property undepreciated—the language “undepreciated” is not used, but “depreciation” is omitted where it is included in the cost of reproduction new—the original cost of the property itself will fairly measure the value of the properties for rate purposes.

Mr. CROSSER. When you are buying an automobile, it would not be necessary for you to consider all those different factors, would it?

Mr. BLEDSOE. No, sir.

Mr. CROSSER. You could with reasonable accuracy determine what the value of it might be, could you not?

Mr. BLEDSOE. Yes. It is a single item of property.

Mr. CROSSER. In other words, theoretically, of course, you could come to the same conclusion in regard to such properties as we are discussing; is not that so?

Mr. BLEDSOE. Theoretically you could, but practically you could not.

Mr. GARBER. Mr. Chairman, may I ask the witness a question? The present fair value of the property, and not the market value, is the Supreme Court rule of valuation?

Mr. BLEDSOE. The present fair value of the property is the language used by the Supreme Court in perhaps 25 cases.

Mr. GARBER. Requiring certain elements of value to be taken into consideration in the determination of “the present fair value.”

Mr. BLEDSOE. Yes, sir.

Mr. GARBER. In the first instance, the commission fixes a tentative value on the property?

Mr. BLEDSOE. Yes, sir.

Mr. GARBER. Serves 30-day notice and if no protest is filed, that valuation becomes final?

Mr. BLEDSOE. I am not sure about the time of notice, but otherwise you are correct, Mr. Garber.

Mr. GARBER. In the event of a protest, a hearing is had, and, valuation is finally fixed as final by the commission after hearing?

Mr. BLEDSOE. Yes, sir.

Mr. GARBER. In any case in court involving the valuation of property, if any additional evidence is introduced regarding the valuation of the property the court refers the valuation back to the commission for an additional hearing or a reconsideration in which they may consider the additional evidence and again finally determine the valuation of the property. Is not that correct?



Mr. BLEDSOE. That is the usual rule; yes, sir.

Mr. GARBER. Section 19a, paragraph F, says:

Upon the completion of the valuation herein provided for the commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time revise and correct its valuations. \* \* \*

This paragraph does not fix any specified time requiring the commission to revalue the property, but I infer from your objections to the recapture clause that in itself necessitates an annual valuation of the property.

Mr. BLEDSOE. Valuations for recapture are made under section 15a. The valuations you are talking about are the regular standard valuations made under 19a. The commission has interpreted the words "in like manner" in section 19a as requiring the making of an inventory for each valuation and this has required additional time and expense. The commission has, in fact, so far as 19a is concerned, found valuations as of different dates for different railroads.

It has announced its intention to find a new value for all of the railroads as of December 31, 1927. Now, 19a would not involve the making of any valuations between the date of the making of the original valuations and December 31, 1927. But when the commission examines the accounts of a given railroad in any year, if examination causes it to think that there may be some funds subject to recapture in that year, then it proceeds to value the property under 15a. If it has made a valuation under 19a, that valuation is made available for consideration in computing the value for recapture.

Mr. GARBER. Of course, the valuation in 19a are always considered in fixing the valuation under 15a, are they not?

Mr. BLEDSOE. If they have been completed, they are, but there are a good many cases in which they have not been completed and most of the recapture valuations, as I understand—although I am not positive about that—have been made under 15a rather than under 19a.

Mr. GARBER. Section 3 of H. R. 7117 amends paragraphs F and G so as to require the commission to make a revaluation only when they have occasion to use it.

Mr. BLEDSOE. Yes, sir.

Mr. GARBER. And as I understand, you say that would save your road about \$500,000 per year?

Mr. BLEDSOE. Yes; unless the commission should think that they had occasion to use value for several years for recapture purposes.

Mr. GARBER. Well, in the event that the recapture clause was repealed—

Mr. BLEDSOE. In the event that the recapture clause was repealed the commission's proposed modification of paragraph F would, according to the estimates of our accounting department, reduce the cost to our company to comply—the annual cost of our company to comply with the requirements of 19a, to about \$50,000 a year. It certainly would greatly reduce the cost.

My own viewpoint is that the valuations were originally required largely on the assumption that there was watered stock, a large amount of watered stock or watered capitalization of the railroads

outstanding in the hands of the public, and the purpose was primarily to ascertain whether or not that was true. The valuation failed to establish that there was any considerable outstanding stock in excess of valuation.

It seems to me that it would be sufficient, if the commission instead of dealing with units of property, it now requiring us to report every unit of property retired and every unit of property installed, would be satisfied with a statement of the ledger cost of property retired and actual cost of property installed. That would be a relatively inexpensive method of handling the situation, and if it were not for the recapture controversies, I doubt if there would in your time or mine, Judge, arise a valuation case requiring the application of the constitutional rule of valuation which is undertaken to be prescribed in section 19a.

Mr. GARBER. What case did you cite in answer to Mr. Huddleston's question whether or not the court required a certain definite specified weight to be given to any element of value in the property?

Mr. BLEDSOE. May I read the decision? There is just one page of it. I shall be very glad to give you the citation. It is *McArdle v. Indianapolis Water Co.* (272 U. S. 400), and the cases therein cited include the *Standard Oil Co. v. Southern Pacific Co.* (268 U. S. 146); *Georgia Railway v. the Railroad Commission* (262 U. S. 625); *Bluefield Co. v. Public Service Commission*, *supra* 691.

Mr. GARBER. But there was not any such holding in the *O'Fallon* case, a later case, was there? The *O'Fallon* case simply held that the commission had not taken into consideration one of the required elements of value as set forth in section 19a; that is, reproduction cost new.

Mr. BLEDSOE. I think I would state it a little differently, Judge, that the court held—and that was the only issue in the *O'Fallon* case, because the commission practically said it had not given any consideration to the cost of reproduction new—that the valuation could not stand because probative effect had not been given to the cost of reproduction new.

Mr. GARBER. Yes.

Mr. BLEDSOE. And it reversed the commission's action and canceled the valuation. It did not send it back for further inquiry. Of course, it was not necessary for the court to go any further in that case. As a lawyer you know that the court limits its decisions to the question involved, and there was only one valuation question involved in that case. There was another question involved that I am going to refer to a little later, relating to the handling of the so-called excess income.

Mr. THOM. When you say in reference to that case, you mean the *O'Fallon* case?

Mr. BLEDSOE. Yes; in the *O'Fallon* case.

Mr. GARBER. That was in regard to interest, 6 per cent interest?

Mr. BLEDSOE. Yes, sir.

Mr. GARBER. And the court held that it could not be legally assessed against the road because—

Mr. BLEDSOE. There had been no ascertainment of the amounts.

Mr. GARBER. Yes; no ascertainment of the valuations.

Mr. BLEDSOE. In this *McArdle* case (272 U. S. 400) the court said:

It is well established that values of utility properties fluctuate, and that owners must bear the decline and are entitled to the increase. The decision

of this court in *Smyth v. Ames* (109 U. S. 406, 547) declares that to ascertain value "the present as compared with the original cost of construction" are, among other things, matters for consideration. But this does not mean that the original cost or the present cost or some figure arbitrarily chosen between these two is to be taken as the measure. The weight to be given to such cost figures and other items or classes of evidence is to be determined in the light of the facts of the case in hand. By far the greater part of the company's land and plant was acquired and constructed long before the war. The present value of the land is much greater than its cost; and the present cost of construction of those parts of the plant is much more than their reasonable original cost. In fact, prices and values have so changed that the amount paid for land in the early years of the enterprise and the cost of plant elements constructed prior to the great rise of prices due to the war do not constitute any real indication of their value at the present time.

Mr. GARBER. There is nothing complex about that, as I see it.

Mr. BLEDSOE. There is some complexity about getting the commission to follow it. The decision cites the cases to which I have referred and continues:

Undoubtedly, the reasonable cost of a system of waterworks—which was involved in this particular case—

well-planned and efficient for the public service, is good evidence of its value at the time of construction. And such actual cost will continue fairly well to measure the amount to be attributed to the physical elements of the property so long as there is no change in the level of applicable prices.

There you have, it seems to me, two perfectly clear tests; one is original cost, not original cost depreciated, but original cost as long as there is no change in the level of prices, as a fair measure of the value of the property. When there is a substantial change in the level of prices, the original cost ceases to have any probative effect and the present cost less depreciation of the physical properties other than land, plus the present value of land is the measure of the value of the physical elements of the property.

I agree with you that that presents an easily applied rule. But, following that decision, the commission rendered its opinion in the O'Fallon case and then the next test case is the Richmond, Fredericksburg & Potomac. Although it had said in the first valuation case that original cost was a fact to be found, not an estimate, and that it would not find original cost except as to very small elements on the basis of an estimate, so far as I know it never applied original cost unless the line had been recently constructed until after the Supreme Court reversed the O'Fallon case and then it assumed that the *Smyth v. Ames* case required it to find and consider original cost, as a factor in determining the value of a property that was constructed many years before, when the level of prices was substantially lower than in the recapture year.

That is the situation that makes it look as though there must be a good deal more litigation before the commission gets around to giving proper effect to decisions of the Supreme Court of the United States.

On yesterday I stated that the amount by which the Atchison system lines had failed to earn a fair return upon its investment in its property for the entire period, or earn 6 per cent was \$127,191,741 and that if it paid one-half of the excess computed on this basis it would increase this we felt to \$130,374,204. I had had a computation made upon the basis of the investment less the amount in the

depreciation reserve and that was put on a copy which did not happen to go to the stenographer who cut the stencil, and I want to add that which would be applicable at the top of page 6 of my statement, as follows:

If there be deducted from the investment account of the Atchison system lines the balance in the depreciation reserve, there would be three years in which there would be excess income, the aggregate of which would be \$20,520,066; but for the entire period the amount by which there would be a failure to earn a fair return would be \$69,076,565.

Mr. THOM. That is if allowed depreciation?

Mr. BLEDSOE. Yes. I had stated when I stopped to answer a question propounded to me that the average rate of return for the period shown in Table 3 for the value of the property as found by the commission in Ex Parte 74, plus net additions and betterments, was 4.33 per cent.

Now, in addition to having it computed for the country as a whole, I had that average computed for the several groups for which rates were made and that average was for the eastern groups which includes the Pocahontas district, 4.58; for the southern group, 4.37 per cent; and for the western group, 4.05 per cent.

It will be observed in table 2 that the amount by which class I carriers failed to earn 5¾ per cent for the years 1921 to 1931, inclusive, was \$3,455,465,960. No part of the earnings are subject to recapture, however, unless they exceed 6 per cent per annum in any particular year. The amount, therefore, by which the carriers failed to earn the maximum income which they were entitled to earn without being subject to recapture was \$4,064,296,418.

The next part of my statement has to do with a matter that has been the subject of discussion here and covered by the questions that have been propounded to me, but in order to make my story consecutive and inasmuch as it is brief, I would like to follow it through.

With all due respect to the commission—and I want to say here that nothing I have said here is intended to reflect upon the commission. I have the highest regard for the integrity and the ability of those gentlemen, and I know that there are no harder working officials in the United States to-day. It is a difference of opinion in which I think I am right and they are wrong, and I believe the Supreme Court has decided the matter as I am presenting it here. I want to make that explanation before I go further into this matter.

I am of the opinion that in determining the value for recapture purposes, it has given too much consideration to economic theories and dissenting opinions of Justices of the Supreme Court of the United States and too little consideration to the opinions of the court itself.

The opinions of the Supreme Court seem to me to clearly establish that the original cost of a well planned and efficiently operated railroad is evidence of its value at the time of construction, and will continue to fairly well measure the amount to be attributed to the physical elements of the properties so long as there is no substantial change in the general level of prices of labor and material used in railroad construction. That when there has been a substantial

change in the level of such prices, original cost ceases to have any probative effect as to present value and that in such case the present cost of constructing the property, less depreciation, if any, plus the present value of land, is a fair measure of the physical elements of the property.

This language is really a paraphrase of the language of the Supreme Court in the decision which I read a moment ago.

That where there has been a substantial change in the level of prices there is no more reason for giving probative effect to original cost in determining the value of a railroad property than in determining the value of property not employed in the public service.

As to property not employed in the public service, in order to make cost evidence of value, the cost must have been incurred at approximately the date as of which the value is to be ascertained, or there must be evidence showing that there has been no substantial change in prices or values since the original cost was incurred.

An examination of the opinion of the commission in the Richmond, Fredericksburg & Potomac case, referred to by Commissioner Eastman as the second test case, indicates that the commission there purported to give probative effect to both original and reproduction cost. An analysis of original cost and the cost of reproduction figures and of the value found by the commission for the property of the Richmond, Fredericksburg & Potomac, would indicate that about a 60 per cent probative effect was given to the cost of reproduction new of structures and equipment other than land, less depreciation, plus the present value of land, and 40 per cent effect to original cost, less depreciation, of structures and equipment.

The valuation act wisely requires the making of certain specific findings of fact by the commission so that both the public and the railroads may be able to ascertain the basis upon which value is computed.

It may be well, in view of Commissioner Eastman's comments on the history of valuation and the carriers' contentions with respect thereto, to state that the controversy as to the relative effect to be given original cost and the cost of reproduction, hereafter more conveniently referred to as original cost and present cost, arose between stockholders of certain railroads and officers of the State of Nebraska charged with enforcing the laws of that State regulating freight rates. That case, *Smyth v. Ames*, was decided March 7, 1898 (169 U. S. 466). The controversy arose in an era of low prices. The railroads insisted that original cost should be given controlling effect in determining value and the State insisted that present cost should be given controlling effect. The Supreme Court held that the basis of all calculations as to reasonableness of rates must be the fair value of the property then being used for the convenience of the public. It then enumerated a number of factors which should be considered, which included both original and present cost, applicable in my judgment as the circumstances of the case might require.

I have always believed that this decision meant original cost should be given controlling effect so long as there was no change in the price level of labor and material employed in railway construction; that, in case of a substantial change in the price level, original

cost ceased to have probative value and present cost became the controlling factor as to the value of the physical properties. The Supreme Court of the United States has continued to clarify its opinion in *Smyth v. Ames* until, in *McCardle v. Indianapolis Water Works* (272 U. S. 400), decided November 22, 1926, it specifically held this to be the rule established in the case of *Smyth v. Ames* and subsequent decisions of the court.

Mr. SHALLENBERGER. May I interrupt to ask a question? If it is your opinion that the valuation be determined, as you say, by original cost plus the increase in value of property since that original investment, would you agree that now, when prices are very much reduced, it would be fair to take present prices into consideration in making that determination? I just wanted to get your interpretation of it. I notice that all the time the court uses the words "fair value." I breed cattle, for instance. I have to sell them at a very cheap price now. If you asked me what I thought was a fair price, it would certainly be more than I could get for them now. Do you think that "fair value" means that the railroads are entitled to a valuation of something else than the immediate price, the price at this time? That is what I am getting at.

Mr. BLEDSOE. Mr. Shallenberger, I have never thought that rates ought to be made on what may be called constitutional value; that is the value as determined by the judgment of the Supreme Court of the United States. But when you come to test the validity of any particular schedule of rates in the courts, then, of course, that value must be applied to determine its validity. I have not believed in making rates on the basis of the high values that prevailed, say, in 1919 and 1920, was either feasible or fair, and for the same reason I do not believe that making rates on the values of the lower prices would be fair now. But the question that we have to contend with here is the taking away from us of excess income supposed to have been earned in these periods of higher values. I have never insisted upon having a value for the particular year. The Interstate Commerce Commission in finding its original values took as to most items an average of five years for the period expiring June 30, 1914. If there were unusual fluctuations they may have covered a longer period. I have never considered that was unfair.

Mr. SHALLENBERGER. I notice in your reply to Mr. Crosser's question as to taking the market value as a basis, you did not agree that that was a fair measure?

Mr. BLEDSOE. No, I do not.

Mr. SHALLENBERGER. But in the valuation of the railroad you say that the real estate should be valued according to present value; is that right?

Mr. BLEDSOE. Yes, sir.

Mr. SHALLENBERGER. Does not that mean the market value of the real estate?

Mr. BLEDSOE. To some extent, that does involve the market value and, in ascertaining that value, both the commission and the railroads have given consideration to sales which they thought might be considered to fairly reflect the present value. However, that difference in treatment between the value of lands and of the other properties arises out of the commission's interpretation of the decision in the Minnesota rate case.



Mr. SHALLENBERGER. The courts, then, are the ones who make the trouble, in handing down their decisions?

Mr. BLEDSOE. I am not sure that the courts make the trouble; but whoever is responsible for the decision in the Minnesota rate case. The carriers claimed present value plus the cost of acquisition of land, and they piled a good many percentages up in that connection that made a rather staggering sum which perhaps well met the condemnation of the court.

Mr. SHALLENBERGER. I have just one other question, and then I am through.

Mr. BLEDSOE. I shall be glad to answer any questions you wish to ask.

Mr. SHALLENBERGER. Do you think it is humanly possible for any agency to fix a valuation at a rate that can not be proved wrong by some other agency? In other words, do you think it is possible to arrive at a final determination of this matter and get it out of the field of controversy?

Mr. BLEDSOE. Do you mean recapture?

Mr. SHALLENBERGER. No, I did not mean that. I meant the general idea of valuation; is it possible under the interpretation of the courts to produce a valuation that everybody will accept?

Mr. BLEDSOE. As a practical matter, Mr. Shallenberger, I do not believe that the question of value as used for rate purposes is likely to be the subject matter of litigation. My experience is that outside of State litigation that arose in the years when it was claimed that States in making rates for their own traffic discriminated against interstate commerce and in favor of the traffic of their own States and against the traffic in other States, there has been only a very limited number of controversies as to value, and I do not anticipate if this recapture question were disposed of that there would be any real controversy in the future as to value, unless the commission made rates so extremely low that they did not yield a fair return, I might say, upon investment of the carriers in the properties.

I have used investment for comparison, as I think that is the fair thing to do and I do not believe that you can find any instance when carriers have insisted, I am certain that I have never insisted, that carriers were entitled to rates on the basis of the high prices prevailing in 1919 or 1920.

Mr. SHALLENBERGER. Your idea is, as I understand it, that the rates are really determined by the commission and disputed or accepted by the railroad upon the question of whether it would afford a fair return under the valuation. Of course, the valuation then became a very important matter, in fact, the determining matter.

Mr. BLEDSOE. Rates have to be made in the main so that they will move the traffic. Every railroad official knows that he has to find a market for the commodities that are produced in the territory which he serves, if his railroad is going to get anything out of the transportation of those commodities and value, except in nation-wide controversies, is a very small factor in the making of rates.

I assume, in fact, I am satisfied, that the commission would like to be able to make rates that would yield on the average a fair return upon the investment in the properties of the carriers. One of the attractive things to me of House bill 7117 is that it recog-

nizes the inability to do this year after year and says that the commission shall be given authority to prescribe a general level of rates that can be stabilized and can be used in lean years as well as in fat years and will enable the carriers to earn enough in the so-called fat years to bridge over the lean years. Does that answer your question?

Mr. SHALLENBERGER. I do not want to pursue this any further, and I do not want to interrupt your statement.

Mr. BLEDSOE. I am very glad to answer any questions you desire to ask.

Mr. SHALLENBERGER. The railroads themselves, after all, are the ones, or the railroad managers are the ones who can determine the rates that will—

Mr. BLEDSOE. Move the traffic.

Mr. SHALLENBERGER. Move the traffic and give the best returns to them.

Mr. BLEDSOE. Yes, sir.

Mr. SHALLENBERGER. On the other hand, we have the commission attempting under all these restrictions and laws to give you more money now than you had before this last order granting advances of 15 per cent. Is that right?

Mr. BLEDSOE. Yes, sir; on certain commodities.

Mr. SHALLENBERGER. On certain commodities, with the idea of raising—

Mr. BLEDSOE. No; it was not 15 per cent. The application was for 15 per cent, but the commission prescribed flat tonnage rates on most commodities.

Mr. SHALLENBERGER. And it was expected to raise an additional \$100,000,000 to assist the railroads in their condition?

Mr. BLEDSOE. Yes, sir.

Mr. SHALLENBERGER. Do you think it can be determined that that sort of an arbitrary rise will actually produce the results expected by the commission? Did the railroads determine those rates or did the commission determine them?

Mr. BLEDSOE. The commission determined the rates in every case on its own responsibility. I think it did this, Mr. Shallenberger, in an effort to help the present depressed situation of the railroads.

Mr. SHALLENBERGER. Do you think it will raise \$100,000,000? Is there evidence or proof that it will raise it?

Mr. BLEDSOE. It is a difficult thing to say just how much it will raise. I do not believe it will raise as much as it has been estimated it would raise.

Mr. SHALLENBERGER. That is the point that I am making.

Mr. BLEDSOE. Because of the competitive situation and particularly of the highway and waterway competition with which we have to deal.

Mr. SHALLENBERGER. That is all I have to ask.

Mr. HUDDLESTON. I want to ask a question. You have stated that during no year since the passage of the transportation act of 1920 have the carriers earned as much as an average of 5¾ per cent.

Mr. BLEDSOE. Class 1 carriers; yes, sir.

Mr. HUDDLESTON. And that the average for that entire period is 4.33?

Mr. BLEDSOE. Yes.

Mr. HUDDLESTON. Why have they not earned the 5.75 per cent which the commission tried to give them?

Mr. BLEDSOE. Mr. Huddleston, I do not think the commission ever undertook to give them rates that would yield 5.75 per cent. I think the commission thought the traffic would not bear rates that would yield that amount.

Mr. HUDDLESTON. Do you agree with that thought?

Mr. BLEDSOE. Sir?

Mr. HUDDLESTON. Do you agree with that thought?

Mr. BLEDSOE. I have not studied the situation sufficiently to say whether it was possible or not, but in some of the years I think perhaps the higher rates would have retarded the movement of traffic. At other times, perhaps, not. I am not a traffic man, and while I know the general principles that they apply, I doubt if my judgment on that situation would be worth very much.

Mr. HUDDLESTON. I gathered that you had very considerable knowledge of the subject and for that reason I was leading you into this field of speculation.

Mr. BLEDSOE. All right, sir; I am willing to speculate with you as best I can.

Mr. HUDDLESTON. Suppose the commission should simply say to the carriers to-day, "Charge whatever you like." What percentage could they earn?

Mr. BLEDSOE. You mean to turn every railroad loose to charge what it saw fit? I think it would bring pandemonium.

Mr. HUDDLESTON. I say, what percentage could they earn?

Mr. BLEDSOE. That is a speculation that I do not want to engage in, but it would be very much less than they are earning now, in my judgment.

Mr. HUDDLESTON. If conditions remained on an average such as they were in 1929, you would not be able to get more than—what was the figure for that year?

Mr. BLEDSOE. 1929 it was 5.22.

Mr. HUDDLESTON. That is the highest figure, is it not?

Mr. BLEDSOE. No. It was 5.45 in 1926.

Mr. HUDDLESTON. That was at the peak.

Mr. BLEDSOE. 1926 and 1929 were the peak years in the volume of traffic moved.

Mr. HUDDLESTON. You do not expect a return to that, do you?

Mr. BLEDSOE. Yes; I hope so, Mr. Huddleston, but not in the immediate future. My own idea is that if we took the average, perhaps, of the period 1923 to 1929 we would get about what we ought to hope to get back to when we get a fair turn on the road to prosperity; not to that of 1929 or 1926, but there is too much room for growth in this country to assume that we will not get back to the average of 1923 or 1929 or even exceed that average.

Mr. HUDDLESTON. The thought I have in mind is that the traffic will not bear a fair return to the carriers either now or in the future.

Mr. BLEDSOE. If it will not, it seems to me that there is but one alternative.

Mr. HUDDLESTON. That is what?

Mr. BLEDSOE. Government ownership.

Mr. HUDDLESTON. The traffic has not borne it during the past 12 years, yet we have had a period of unprecedented prosperity when

every wheel was turning and everything was being done that men could reasonably do. We can not hope for a return to any such state of prosperity, or such boom times as we had in those years. It would seem to me to be a fair conclusion that the average of 4.80 for the past 10 years is as high as the traffic will bear for any similar period in future.

Mr. BLEDSOE. Well, of course, we are all looking forward to the future with considerable fear and I am also looking forward to it with considerable hope. None of us can tell what the future will bring, but we have, of course, to deal with the circumstances as they are to-day, so far as the situation here is concerned.

Mr. HUDDLESTON. The rates charged, or some other cause, has built for the rail carriers a formidable competition and has caused readjustments of industry and relocation of plants and a thousand and one things. That is the line of development, that is the course of progress. You can not stop the use of the motor vehicle.

Mr. BLEDSOE. Mr. Huddleston, there is need to stop it. All that is needed is to charge the man who uses the highway for the purpose of conducting a business for profit, a reasonable charge for that service, and then permit the use by the carriers of whatever form of vehicle is necessary to coordinate the transportation service. Quit operating Government barges in competition with railway lines, at Government expense. The States are wide-awake, so far as the highway situation is concerned. The State of Texas has enacted an admirable law dealing with that subject.

Mr. HUDDLESTON. They have been awakened by an intensive rail propaganda, and the question is whether they are going to remain in their present state of mind on that subject.

Mr. BLEDSOE. I do not know just to whom you refer when you say they have been awakened by propaganda. The railroads have had very little say about it. The most powerful propaganda organization in the United States is the Mississippi Valley crowd, and they claim to be able to control Congress in respect to waterways.

Mr. HUDDLESTON. I refer to this antimotor carrier propaganda. The Mississippi Valley Association has not anything to do with that.

Mr. BLEDSOE. No; but the motor carriers are spending \$10 to where the railroads are spending 10 cents.

Mr. HUDDLESTON. Every few days some railroad official comes to my home town and makes a speech to our Rotary or some other civic association, which is given front-page display in the local papers, and in which he makes a great outcry, the net effect of which is he wants this competition pulled off. Mr. Atterbury was down there the other day. The traffic association and the railroad employees and everybody else respond and are galvanized into action clamoring for help against the motor competitors.

Mr. BLEDSOE. I am familiar with it because there is hardly a mail or newspaper that comes into my office in which there is not an interview with somebody representing the motor-vehicle people. They have an organization that is an important factor in determining how many miles of highways we will build in the United States, and the amount of money we will spend for them, and if you had been reading what comes over my desk, Mr. Huddleston, you would have been reading more motor-vehicle propaganda, a great deal, than you have railroad propaganda.

Mr. HUDDLESTON. May I say that if anybody has got a bug biting him, he tries to set it on a Congressman. We are the peculiar game of the propagandist. There is no closed season on us. Of the volume of stuff that has passed on to me, at least 10 to 1 is on the rail carrier side.

Mr. BLEDSOE. The bus and truck people are much more active than we have been, and they must be more active in your territory than they are in mine. But I do know that the people of the States in which we operate are entirely alive to what it is costing them to operate highways as places of business upon which other people can conduct their affairs at the expense of the average user of the automobile, who contributes about 95 per cent of the tax and gets perhaps one-third as much relatively as he pays taxes for. These motor vehicles, some of them when loaded weigh 20 or 30 tons, with their trailers take up the highway so that the private individual can not get by.

Mr. MILLIGAN. With reference to the Santa Fe, how much does the Santa Fe Railroad donate to the State of Missouri to maintain the highways in that State?

Mr. BLEDSOE. I am not able to say just how much, because we do not keep our accounts separated as between the various purposes for which we contribute. Some years ago—

Mr. MILLIGAN. Are those highways constructed by bonds issued against the license taxes of the automobiles?

Mr. BLEDSOE. Some of the States' construction in part—

Mr. MILLIGAN. I am speaking of Missouri.

Mr. BLEDSOE. I do not think I am able to give you that information.

Mr. MILLIGAN. I think you will find that is true.

Mr. BLEDSOE. Yes. I find that a good many roads are constructed by bonds, but that the citizens of Missouri who are the ordinary users of the highways for the ordinary purposes pay about 95 per cent of those bonds, whereas the man who uses it as a place of business pays only a nominal part of the cost.

Mr. MILLIGAN. But these bonds are issued under the automobile license tax, and the railroads, as I understand it, do not donate anything.

Mr. BLEDSOE. The last time I looked into the cost of highways—it has been some years ago—in the States in which we operated, we paid a very substantial percentage of the total. That is not true in some States at the present time.

The CHAIRMAN. Since we have gotten into a discussion of this subject of trucks and busses, may I ask do you own any busses and trucks?

Mr. BLEDSOE. We do not.

The CHAIRMAN. What percentage of the trucks and busses in Arkansas are owned by the railroads?

Mr. BLEDSOE. I have not the remotest idea.

The CHAIRMAN. A very large percentage, I understand.

Mr. BLEDSOE. What I am saying applies with equal force to railroad-owned bus and truck as to those other people who use the highways for hire.

The CHAIRMAN. In our State I remember there was a bus concern bought out for \$375,000 and the railroad took \$200,000 worth of the paper. I do not know whether they owned it or not.

Mr. BLEDSOE. There is a substantial railroad ownership of busses and trucks. What it is I do not know, but the Interstate Commerce Commission has conducted an investigation and made a report in which the extent of that ownership, I believe, is shown. But the railroad bus or truck has no greater right to use the highway without making adequate compensation than anybody else.

The CHAIRMAN. You do not think that legislation should ever be passed to put a competitor out of business?

Mr. BLEDSOE. No, sir.

The CHAIRMAN. You think the competition should simply be put under reasonable regulations?

Mr. BLEDSOE. Under reasonable regulation and the users of the highways for profit should be made to pay adequate compensation for the use of property that belongs to the State.

The CHAIRMAN. That would be reasonable regulation.

Mr. BLEDSOE. That would be reasonable regulation; yes, sir.

The CHAIRMAN. Let us get back to this matter of percentage of earnings. I think you said that over the period of recapture the railroads had earned on an average 4.33 per cent?

Mr. BLEDSOE. Yes, sir.

The CHAIRMAN. Now, Mr. Bledsoe, good and bad railroads, well financed and well managed and others—

Mr. BLEDSOE. All classes.

The CHAIRMAN. Take them all; do you call that an unreasonably low return on all of them en masse for 11 years?

Mr. BLEDSOE. I did not present the statement for the purpose of showing that it was an unreasonably low return, Mr. Chairman. I presented it for the purpose of showing that the rate of return did not justify the application of recapture to any excess that any railroad happened to earn in a particular year. I have not intended to make any argument about the adequacy of the return except as applying to the single question of the fairness of recapture.

The CHAIRMAN. You are not attacking the rates or the returns en masse?

Mr. BLEDSOE. I am not.

Mr. HUDDLESTON. May I make this suggestion? A return of that kind on an investment under conditions such as we have had in this country from 1923 to 1929 is not a fair return.

Mr. BLEDSOE. 4.33?

Mr. HUDDLESTON. Yes.

Mr. BLEDSOE. I would think that 4.33 was hardly a fair return.

Mr. HUDDLESTON. Capital can not be induced to make an investment where the highest promise of return is 5.45, the lowest nothing at all, and the average during a boom period is only 4.30, could it?

Mr. BLEDSOE. If it were known that that was the limit, probably not.

Mr. HUDDLESTON. Of course, the carriers have been fortunately situated in a certain respect during the period under discussion, in that many of their securities were floated at a time of low interest rates. They were probably paying from 4 to 5 per cent on the half of their capitalization which was represented by bonds. Therefore



any part of this earning which exceeded that interest rate was velvet to the stockholders, but we can not expect that to continue as a permanent condition.

Mr. BLEDSOE. I do not agree with you that it would be velvet. I would agree with you that it does afford some margin for the stockholders to get something out of the difference between the 4 or 5 per cent and the fair return.

Mr. HUDDLESTON. Something in addition to a fair return is what I mean by velvet.

Mr. BLEDSOE. Yes. But, of course, since the war in most instances money has cost the carriers, I should say, on the average, considerably in excess of 5 per cent.

Mr. HUDDLESTON. But they had securities outstanding for previous periods.

Mr. BLEDSOE. Yes.

Mr. HUDDLESTON. In looking over a list we find that many of the carriers have 4 per cent bonds outstanding.

Mr. BLEDSOE. We have a large amount of bonds at 4 per cent.

Mr. HUDDLESTON. And some, I believe, even less than that?

Mr. BLEDSOE. Yes. There are a few 3 per cent bonds outstanding, but the Atchison has no such bonds.

The CHAIRMAN. Let me ask you this question. We are talking about what the traffic will bear. A return of 4.33 per cent for all the railroads includes the poor railroad that certainly could not earn a return on any rate that would be set at a point where the traffic would move. But I am talking about the railroads en masse. Do you think traffic would move at a rate that would pay all the carriers en masse 6 per cent?

✓ Mr. BLEDSOE. I seriously doubt it.

The CHAIRMAN. That is the point I am getting at. Of course, you can not legislate against somebody using bad judgment and building a railroad where there ought not to be one built.

Mr. BLEDSOE. No.

The CHAIRMAN. Or where one was built on a hope and it vanished.

Mr. BLEDSOE. Mr. Chairman, I think that is right.

Mr. MAPES. I would like to ask a question.

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. Mr. Chairman, before you proceed any further, I would be glad to have this witness tell in a word how original cost is determined.

Mr. BLEDSOE. Original cost is determined from the records as a fact, if possible. There are, however, very few railroads, the construction of which dates back many years, where all cost data are available. The commission has generally assumed, where it was unable to find original cost from the records of roads constructed prior to 1914, that the cost of reproduction at 1914 prices would constitute a reasonably reliable estimate of the original cost.

Mr. MAPES. Should a road that was built when the prices were about the same as they are now be valued at its original cost? Is that right, regardless of whether the cost was wasteful or extravagant or not?

Mr. BLEDSOE. No; I do not understand that wasteful expenditure should be included anywhere, Mr. Mapes.

Mr. MAPES. That is the reason I asked how original cost was determined.

Mr. BLEDSOE. From record expenditures, if available.

There were but few cases of recent construction and these were usually short lines, extensions of existing lines, or additions and betterments to existing lines. Where the original cost was not available the commission inventoried the property other than land, of some date subsequent to June 30, 1914, and prior to December 31, 1920, at 1914 prices; that is, at the average cost of construction in the preceding five years. Lands were actually appraised.

Mr. MAPES. In the construction of short lines, now, and branch lines, and so on, how does the commission determine it?

Mr. BLEDSOE. You mean recently constructed lines?

Mr. MAPES. Yes.

Mr. BLEDSOE. It takes, if available, original cost, but resolves all cost figures back to 1914 prices in order that there may be uniformity of base on which to bring the valuations down to date when it gets ready to bring them down. For the period, of course, from 1918 up to 1928, at least, reproduction costs would be substantially higher than original costs of property contracted before 1916.

The commission has original costs there, and my impression is that notwithstanding they found reproduction costs, they have usually given the valuations substantially in accord with original costs in cases of recent construction.

Mr. MAPES. Original cost is not original cost at all, then, is it?

Mr. BLEDSOE. Not for railroads that were constructed years ago.

Mr. MAPES. Those that are constructed now, because the go back to 1914.

Mr. BLEDSOE. Well, they have the record of original costs of the railroad's construction since the valuation law was enacted.

Mr. MAPES. You say the commission fixes the original cost, as of the date, 1914.

Mr. BLEDSOE. That is the date as of which the prices are applied. The valuations are made as of dates from 1916 up to 1920, maybe 1921.

Mr. PARKER. Mr. Chairman.

The CHAIRMAN. Mr. Parker.

Mr. PARKER. Are not the production and construction costs available since 1920? Since the enactment of the transportation act, they are a matter of actual record, the actual figures?

Mr. BLEDSOE. Yes.

Mr. PARKER. And they have to be.

Mr. BLEDSOE. Yes, sir.

Mr. PARKER. I mean, as a practical proposition they have what the actual cost was, because they have to go to the commission and get permission to raise the money, and then they have to show where they spent it.

Mr. BLEDSOE. Ever since 1920, the commission has had authority to supervise the accounts of the companies and they have complete records of the costs since that date. Since the commission prescribed uniform accounting, they know what it is. They know what it cost each company. They have those accounts.

Mr. PARKER. That is true since 1920?

Mr. BLEDSOE. Yes; since the transportation act was passed.

Mr. PARKER. Since the transportation act was passed?

Mr. BLEDSOE. Yes, sir.

Mr. MAPES. And, since 1920, these extravagant expenditures, so-called, are eliminated in the actual cost figures of the road, is that true?

Mr. BLEDSOE. If there ever were any such, I presume so.

Mr. MAPES. The commission then takes as the original costs the cost of construction since 1920, the actual expenditures of the road, because the commission supervises those actual expenditures; is that correct?

Mr. BLEDSOE. Yes; and they have supervised the amounts of the carriers since 1906 or 1910.

Mr. MAPES. Is that a correct statement?

Mr. BLEDSOE. Yes, sir.

Mr. MAPES. That is what I am trying to get at.

Mr. BLEDSOE. I want to go into a discussion of the status of recapturable income.

Mr. Fulbright was asked if a return of recaptured funds that have heretofore been paid over to the commission under an act of Congress repealing the recapture provisions retroactively would not be the equivalent of appropriating an equal amount of money out of the Treasury of the United States.

The status and the use that could be made of the recapture fund was considered by the Attorney General of the United States in an opinion reported in Opinions of the Attorney General, Vol. 33, pages 316-323. After reciting certain paragraphs of section 15a, the Attorney General held—and, in that connection, he quoted several provisions of the act:

Quotations are made at such length from the statute to show how completely this fund is under the immediate supervision and control of the Interstate Commerce Commission. In paragraph (5) it is declared that the carrier shall hold the part of the excess belonging to this contingent fund "as trustee for, and shall pay it to the United States"; yet when the entire section is read together it conclusively appears that the Government of the United States possesses no beneficial interest whatever in such fund, and that it is held solely for the purposes therein prescribed.

It seems clear that the United States has no property interest in this fund and no power to appropriate the fund to its own use. It also seems reasonably certain from the reports of the commission that the purposes for which the trust fund was created can not be accomplished. It, therefore, would appear that the purpose of the trust fund having failed, the equitable owners of the trust fund are those who paid the money into such trust fund. Retroactive repeal would not affect a single taxpayer or a single ratepayer. It would not add a dollar to either taxes or rates.

Inquiry was also made as to whether carriers that may be held to have earned excess income in particular years had set apart and earmarked such excess income so as to insure the amount thereof would be paid to the Interstate Commerce Commission in case it should finally be determined some part of such income was subject to recapture.

Whether any particular carrier will have excess income in any particular year and the amount thereof depends upon so many uncertain factors it is only in an extreme case that the carrier could

be certain there would be excess income for any period, and even in such a case the amount of such excess would be so uncertain that it would be a mere guess. The setting up of an amount, even though it was a guess, on the books of the company as a reserve would be treated as a recognition that the sum so set up was payable, that is, that an equivalent sum to that set-up was payable, although the officers of the carrier responsible for dealing with the matter might be quite certain that if correct principles of valuation were applied, the amount subject to recapture, if any, would be much less than that ascertained upon the commission's somewhat fluctuating basis.

In this connection it will be helpful to consider what the Supreme Court of the United States had to say on the question of when such excess income became payable in the case of the *St. Louis & O'Fallon Railway Co. v. United States* (279 U. S. 461). The commission required the O'Fallon Railway Co. to pay 6 per cent interest on the amount it found subject to recapture for a period beginning four months after the expiration of the year in which such excess was found to be earned. The question of the validity of this part of the commission's order was involved in the O'Fallon case, and the court said in respect thereto (279 U. S. 483):

The commission directed the O'Fallon to pay 6 per cent interest on the recaptured one-half of its ascertained excess net railway operating income beginning four months from the end of the year during which the excess accrued (sec. 6). The district court rightly ruled that as the carrier made bona fide denial of any excess under circumstances sufficient to justify a contest, no interest should have been imposed for any time prior to the final order. Not until then could the carrier know what, if anything, it should pay.

It follows as a matter of course from this decision that not until the final determination by the commission, and in case of judicial review not until final ascertainment by the court, could the carrier know what, if anything, it is required to pay. It, therefore, can not know until then the amount which should be placed in a reserve fund.

Now, going to the subject of House bills 7116 and 7117:

House bills 7116 and 7117 propose to repeal the rate-making provision of section 15a and the recapture clauses of section 15a for the future.

Commissioner Eastman, Mr. Fulbright, and Mr. Benton have discussed before the committee what, if anything, should be substituted for the rate-making provisions of section 15a that are proposed to be repealed.

House bill 7116 provides for the use of a rate base instead of value for the purpose of fixing the amount upon which the carriers are entitled to earn a fair return if they can do so under reasonable rates.

The carriers, I believe, generally are opposed to the substituting of a rate base for value as provided by House bill 7116. They believe the tendency of such an enactment would be to substitute a rate base for constitutional value and administrative discretion for judicial interpretation.

House bill 7117 gives no consideration to value or a fair return thereon but requires the commission to give consideration to the transportation needs of the country and directs the commission, so

far as practicable, to initiate, modify, establish, and adjust rates so that the revenues therefrom will, under honest, efficient and economical management and reasonable expenditures for maintenance of way and structures, constitute a safe basis in the maintenance of a national system of rail transportation. It recognizes that revenues fall with decreasing traffic in times of economic depression and rise with increasing traffic in times of economic prosperity, and that these changes shall not necessarily be regarded as requiring an increase or decrease in rates, but that the commission shall in the exercise of a sound discretion maintain, so far as possible, a general level of rates which will produce revenues consistent with such standard.

Inquiry was made of some of the witnesses as to why Congress should not return to the policy in force before the enactment of the transportation act of simply prescribing rates that shall be just and reasonable and omitting any other instructions or directions to the commission.

My own judgment, based upon my own experience and that of others which has come under my observation in connection with the financing of the needs of railroad companies, is that the repeal of section 15a without substituting therefor some provision recognizing the revenue needs of the carriers will be treated by the investing public as an abdication by Congress of all interest in the financial welfare of the railroads. Such a course would further seriously impair railroad credit and render the financing by the railroads of their maturing obligations extremely difficult and the raising of additional money for construction of extensions and additions and betterments practically impossible for a great majority of the railroads. In such event, public confidence in the ability of the railroad companies to pay the interest on their obligations and the dividends on their stocks will not be revived until the commission has demonstrated under the new rule of regulation its purpose to prescribe rates sufficient to yield the necessary revenue to accomplish the purposes specified in paragraph (2) of section 15a, as it is proposed to be amended by House bill 7117.

"Reasonable rates," as fixed in the interstate commerce act, means a rate reasonable in the light of conditions prevailing at the time it is made effective, and does not take into consideration the fact that revenues will fall with decreasing traffic in times of economic depression and rise with increasing traffic in times of economic prosperity. It does not meet the situation attempted to be taken care of by the following paragraph in section 2 of House bill 7117:

The fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or reducing rates, as the case may be; but it is hereby declared the duty of the commission, in the exercise of its sound discretion, to maintain as far as possible a general level of rates which, over a reasonable period of years, will produce revenues consistent with the standard above set forth.

The commission, in recommending the inclusion of this paragraph, no doubt had in mind that, in the absence of some direction other than that rates should be reasonable in the light of the present only, it should be given authority to determine what would constitute reasonable rates, the general level of which could be maintained over a reasonable period of years and not be subject to disturbing and

annoying changes in the case of a decline in traffic below normal or the increase in traffic above normal. In other words, the commission has indicated the directions which it believes will be in the public interest and in the interest of an adequate national system of railway transportation for Congress to give to it in dealing with rate problems. It can not be said with certainty that the authority to make reasonable rates for the present and the immediate future, in the light of the then existing conditions, would justify the commission in stabilizing rates on a basis so that neither declines in traffic nor increases in traffic would necessitate the making of new rates.

Life insurance companies, savings banks, and trustees have long been the principal customers of, and the largest holders of, railroad securities. Banks, bankers, and other institutions distributing securities purchase securities for the purpose of immediate distribution and quick turn-over. They are not investors in the ordinary sense of the word, but are the instrumentalities by which railroad securities are distributed to investors.

There are generally statutory limitations as to the character of securities which may be purchased by life insurance companies, savings banks, and trustees. Secured bonds and obligations of a railroad company are legal investments in New York for savings banks and trustees only when earnings available for fixed charges have equalled at least one and one-half times such fixed charges for at least five of the six years next preceding such investment, and if unsecured not less than twice such fixed charges. Bonds, debentures, and preferred stocks of railroad companies are legal investments for New York life insurance companies when earnings applicable to dividends equal at least four per cent of their outstanding capital stock in each of the preceding five years.

As of January 1, 1931, seven and one-half billion dollars of railroad bonds were legal investments for savings banks and as of January 1, 1932, perhaps less than \$2,000,000,000.

The New York Legislature has passed an act which has now been signed by the governor to exclude the year 1931 from consideration in determining the duties of savings banks and trustees in respect to railroad bonds owned on January 1, 1932.

I am dealing with the subject of pooling next. For Congress to authorize the Interstate Commerce Commission to require carriers to pool their earnings as provided in the first opinion in *ex parte* 103 would seriously impair railroad credit. To authorize the commission to require a wisely located, conservatively capitalized and well-managed railroad, with a conservative dividend policy to contribute any part of its earnings to the support of another or other railroads, the location, capitalization, and dividend policies over which the first-mentioned road has no control and for which actions and policies it has no responsibility, would impose such a hazard upon conservatism, efficiency, and sound financial policies as to destroy the confidence of the investing public in even the strongest railroads being able to meet their fixed charges and pay dividends to their stockholders upon a conservative capitalization.

Such pooling would also require the shippers to locate upon such wisely located and conservatively operated railroads to pay rates to maintain rail service in far-distant sections of the country for



other railroads and other shippers in which they have no personal interest. I have been unable to see any reason for requiring such shippers to make such payments and I see no reason why their rights should be disregarded. I seriously doubt the constitutional right of Congress to impose such a requirement.

That is in response to Commissioner Eastman's suggestion in regard to the matter.

In Commissioner Eastman's statement on pages 17 and 18 of the mimeographed copies distributed, he apparently attributes to the carriers a disposition to indulge in unnecessary litigation in connection with recapture, and also assumes that neither the expense nor the conduct of such litigation is a burden on the railway companies.

I would like to say in response to this suggestion that the railroads do feel keenly the expense incurred in connection with recapture and of the conduct of litigation in relation thereto. It is an expense and burden that they would like very much to be rid of. The questions involved, however, are important and the amount of money involved is very large.

As indicating the burden of complying with the valuation act and the orders of the commission, the Atchison system lines have expended on the average for the last three years \$651,000 per year to comply with the commission's orders and to present their own views in respect to recapture questions. This has operated to reduce their net railway operating income \$651,000 per year on the average during such period and in two of those years that have been exceptionally lean years, other railroads have, no doubt, suffered similar losses in income. There is, therefore, every reason why the railroads should desire to avoid recapture expenses and recapture litigation.

The Supreme Court held in the *O'Fallon case* (279 U. S. 461), the only recapture case involving the principles of valuation which has come before it, that the commission had applied erroneous principles of valuation and that in doing so the commission's action was in violation of the carriers' constitutional rights. The carriers can hardly be blamed for the institution of a lawsuit in which their contentions were fully sustained and the commission's valuation canceled.

I agree with Commissioner Eastman that the best method of ending this litigation and expense is by the retroactive repeal of the recapture provisions of section 15a, and the amendment of section 19a, so as to relieve the carriers from the commission's inventory requirements, leaving in the commission authority, however, to keep fully informed as to changes in property and property investment.

The CHAIRMAN. You have five minutes, if anybody wants to ask Mr. Bledsoe a question.

Mr. SHALLENBERGER. Mr. Bledsoe, I understood your reply to Mr. Huddleston to be, if railroads are permitted to fix rates, that the returns will not be as much as under the rates that you have got now.

Mr. BLEDSOE. I think that is so.

Mr. SHALLENBERGER. You think the competition among them would result in a reduction of rates, which would be unprofitable?

Mr. BLEDSOE. I think so.

Mr. SHALLENBERGER. Is that the opinion of most railroad men?

Mr. BLEDSOE. I do not know.

Mr. SHALLENBERGER. Perhaps I ought not to ask you that.

Mr. BLEDSOE. I do not know. I would not want to say that that is the opinion of most railroad men, but, Mr. Shallenberger, I regard the situation as requiring the vesting of the power to regulate rates, both maximum and minimum, in some regulatory body, and I have believed that this is in the interest of the public and the railroads.

Mr. SHALLENBERGER. I presume that the railroads would fix the rates that would return them the maximum profit.

Mr. BLEDSOE. Well, competition is pretty strong, and not only strong between the railroads, but between communities and between markets. We want to find markets for people on our railroads, and they are the same markets that must be reached for the people who live upon other lines. We want to make rates that will reach those markets, whether on a long or short haul, and the other railroads, whether farther away or closer, want to reach that same market for the people who live on their railroads. And this brings about a competitive situation which would, in my judgment, in many instances be destructive if we did not have regulation. I have never been opposed, as I say, to an act of Congress which gives to the Interstate Commerce Commission authority to regulate rates, rules, and practices, and so forth, of the carriers.

Mr. SHALLENBERGER. Of course, there is a maximum beyond which the carriers could not go, and you really could not meet that.

Mr. BLEDSOE. Regulation results in much fairer rates than if the unregulated competitive conditions prevailed.

The CHAIRMAN. Thank you very much, Mr. Bledsoe.

Mr. PARKER. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Parker.

Mr. PARKER. Can you tell what percentage of the bonds of your company is held by institutions and what percentage is held by individuals? Do you have any figures on that?

Mr. BLEDSOE. No; I have not. I have had a computation made as to our stock, but most of our bonds are not registered bonds, and it is very difficult to tell.

I think I have the figures as to the stock.

Mr. PARKER. I was thinking particularly about the bonds.

Mr. BLEDSOE. Most of our bonds are not registered. We have every reason to believe, from the way that the coupons come in, that they are largely held by life insurance companies, savings banks, fiduciaries, and educational institutions.

Mr. PARKER. I did not know whether you could give us that information or not.

Mr. BLEDSOE. I can not answer that offhand, and it can not be answered perhaps at all, but I think it might be said that they are held by the parties named, and by educational and scientific institutions, religious organizations, hospitals, charitable organizations, banks, and trust companies.

Mr. PARKER. You can not give us any estimate as to the percentage?

Mr. BLEDSOE. Oh, no; I could not, because I do not suppose that more than five per cent of our bonds are registered, and it is only as to registered bonds that we can know who is the owner.

Mr. PARKER. I did not know but what you might have that information.

Mr. BLEDSOE. No; we have not. We have endeavored to obtain that information in a general way, by inquiry as to who are the owners of the coupons presented for payment, but we can not get enough information to make estimates of ownership reliable.

Mr. PARKER. I have seen an estimate that about 20 per cent were owned by individuals and 80 per cent by institutions.

Mr. BLEDSOE. I would not be surprised if that is a reasonably fair estimate.

I thank you, Mr. Chairman, for the patience with which you have heard me.

Mr. GILLEN. Does this recapture clause not have any good traits at all?

Mr. BLEDSOE. Well, the fact that the commission has found no good traits; that the shippers have found no good traits; that the State commissioners have found no good traits; and the railroads have found no good traits, would indicate, if it has any good traits, they are very difficult to find.

Mr. GILLEN. I was just wondering if it had any friends.

The CHAIRMAN. We are very much obliged to you, Mr. Bledsoe.

Mr. BLEDSOE. Thank you.

The CHAIRMAN. The committee will stand adjourned until 10 o'clock, Tuesday morning.

(Thereupon, at 11.47 o'clock a. m., the committee adjourned until Tuesday, February 2, 1932, at 10 o'clock a. m.)

x

## RAILROAD LEGISLATION

TUESDAY, FEBRUARY 2, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

(The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

**STATEMENT OF ALFRED P. THOM, GENERAL COUNSEL OF THE ASSOCIATION OF RAILWAY EXECUTIVES, AND THE AMERICAN RAILWAY ASSOCIATION, TRANSPORTATION BUILDING, WASHINGTON, D. C.**

The CHAIRMAN. You may proceed, Mr. Thom.

Mr. THOM. Mr. Chairman and gentlemen, before beginning my own statement, I would like to have the opportunity of reading into the record two brief statements, dictated by Mr. Bledsoe, who desires them to be incorporated as a part of his statement.

The CHAIRMAN. Mr. Bledsoe?

Mr. THOM. Yes, sir.

What I am now reading are statements from Mr. Bledsoe, the witness that immediately preceded me.

The first of these statements is:

Mr. Benton conceded that it might be necessary to have included in the bill some recognition of the rights of the carriers to earn rates, which, under honest, efficient, and economical management, would sustain a national transportation system adequate to meet the needs of the public; but indicated that that purpose was necessary only as to a class of investors or members of the public designated as "timid souls." That designation can perhaps be now well applied to the entire security purchasing public.

The fact of the long-continued decline in rail traffic and rail earnings, of constant reductions, in the failure to pay dividends, failure to pay interest, failure of banks and loss of bank deposits, has in the past created a Nation of timid souls, so timid indeed that a great majority of the people hesitate to purchase even things necessary for their personal and family requirements. This is not the time to increase timidity or to take action which will delay recovery from such timidity. Shippers' needs—particularly when there is a return to normal conditions, which every one of us, having faith in our country, hopes and expects to occur before a great while—may have to be met while there are many investors who continue to be timid souls.

That is one statement. The other is this:

Mr. Fulbright made a statement in respect to the accounting in connection with the handling of ballast charges where there is a restoration of ballast worn out and at the same time an increase in the thickness of the ballast.

Under the commission's accounting requirements, the cost of replacing the ballast that has been worn out, and the cost of labor in connection with the

installation of the additional ballast, are all charged to operating expenses. The cost of the ballast and its dumping on the track are charged to capital account. The commission's reason for not requiring the charging of the labor cost of spreading the additional ballast, after it is placed upon the track, to capital instead of to operating expenses is the difficulty of segregating the labor cost as between the two. The labor cost of spreading additional ballast in connection with the replacement is relatively small. It is a subject that, I understand, has given the accounting officers of the commission a good deal of trouble, but they have found no reason as yet for changing the rule. It is a matter as to which the carriers have no choice.

The commission has another rule, however, which operates more to the disadvantage of the carriers than the rule above mentioned does to their advantage. The commission's regulations require the carrier to charge to profit and loss, rather than to operating expenses, the cost of property consumed in rendering service, but not replaced when retired. In other words, the cost of property not replaced when retired ought to be included in operating expenses, because it is worn out in rendering service; but its cost never gets into the operating expense accounts of the carriers.

My name is Alfred P. Thom. I am general counsel of the Association of Railway Executives and of the American Railway Association.

I appear here for the former.

The subject now under consideration is not a new one before this committee. Twelve years ago it was considered here at length. There are but three of the committee that then heard it, who are now members of the committee as at present constituted, the chairman, Mr. Rayburn, the former chairman, Mr. Parker, and Mr. Cooper of Ohio, are the only three members of the committee that then considered this bill.

Mr. GARBER. They are pretty good men too, are they not?

Mr. THOM. Fine.

The rest of the members, the others of the committee, have either gone into private life, or have passed on to a higher tribunal where those of us who participated in the consideration of this matter here and knew the action taken by this committee, have the comfortable assurance that they are having no difficulty in explaining their opposition to section 15a.

The association which I now represent appeared here then in opposition to this measure. The committee agreed, as to its unwisdom, and an adverse report was made in respect to it by the committee to the House of Representatives. An opinion was given by the present Chief Justice of the United States that the provision was unconstitutional. That opinion was before this committee at the time.

It was forced over by the Senate, by an accumulation of business influence, which I have never seen exceeded in matters presented to Congress. I have here a petition signed by most of the important business houses, from the Atlantic to the Pacific, and from the Gulf to Canada, urging this measure upon Congress. Notwithstanding that, this committee, in its report to the House, said this:

"RULE OF RATE MAKING"

I refer to the report that was made by Chairman Esch to the House of Representatives to accompany H. R. 10453, report No. 456, Sixty-sixth Congress, first session. This is what was said in that report in regard to the rule of rate making.

Section 417 provides as follows:

The commission shall be charged with the duty and responsibility of observing and keeping informed as to the transportation needs and the transportation facilities and service of the country, and as to the operating revenues necessary to the adequacy and efficiency of such transportation facilities and service. In reaching its conclusions as to the justness and reasonableness of any rate, fare, charge, classification, regulation, or practice, the commission shall take into consideration the interest of the public, the shippers, the reasonable cost of maintenance and operation (including the wages of labor, depreciation, and taxes), and a fair return upon the value of the property used or held for the service of transportation."

When the bill passed the Senate, it had in it all of the fundamentals of the present section 15a. It was referred to conference and the conferees, after long debate, accepted the Senate's philosophy and the matter became a law in the shape in which it is now in the statute.

I desire to discuss before the committee three major questions which arise in connection with H. R. 7116 and H. R. 7117, now before the committee for consideration.

These questions relate: First, to the recapture provisions of section 15a of the interstate commerce act.

Second, to the proposed provision as to a rule of rate making, and

Third, to the repeal of section 19a of said act, which provides for valuation of railroad properties to be made by the commission.

I shall consider these in their order.

Before undertaking the discussion, however, I would like to define and have the committee to appreciate the point of view from which I shall ask that these matters be considered by it.

Whatever may be the equities of investors in these properties, growing out of the fact that their earnings have been strictly limited both in times of prosperity and in times of depression by the regulatory powers of the Government, I shall not ask that the matters here in issue be considered from that standpoint. I am here making no plea for the protection of or justice to the private interests of the owners of these properties, but am asking only that the questions before the committee shall be considered and solved with reference alone to what the public interest requires in connection with them.

I am willing to subject every argument I advance to that test and to that test alone, so that if the public interest does not require the thing to be done which I advocate, I must submit to the issue going, against me.

At the outset, therefore, it is necessary to inquire whether the existence and maintenance of an adequate and efficient system of rail transportation is still essential to the public welfare. If it is not, and rail transportation has become obsolete, as the oxcart and the canal, and other systems which have done their work in their day and have disappeared, there is no necessity to do anything about it. When a system has survived its usefulness, there is no obligation on the public to assume the impossible task of trying to save it.

But, if rail transportation continues to be an essential agency of commerce, then the public interest, whatever it is, must be recognized and protected.

What is justified and is to be done must be measured by the public interest and the public interest alone.



The first question, therefore, to be fairly met and fairly answered is whether the railroads are, notwithstanding recent developments in transportation, essential to the adequate and efficient transportation which the public needs. It is fair to say that it is the universal judgment of mankind that the new forms of transportation can not provide for the entire transportation needs of the public, and that railroad service is, and will, so far as human foresight can reveal, continue to be essential to the public welfare.

It may be well to obtain a detached view of this question. The subject has been recently under careful and intelligent study in New South Wales. In the report of the commission of that State on Government railways and tramways, for the year ended June 30, 1930, the commission says:

Attention has been drawn by the commissioners in their annual report for some years past to the effect of motor competition on the earning powers of this State's railway system \* \* \*.

The importance of this matter justifies a repetition of the final clause in the Australasian Railway Commission's statement quoted in the last report:

"\* \* \* it is beyond question that the road motor form of freight transport can not pretend, in the final analysis, to cope with primary production, and as it is upon the value of such primary production that the foundation of the Commonwealth and the Dominion rests, it is obvious that if the railroads are crippled, this foundation will be rendered insecure and in time the financial stability of Australia and New Zealand will be gravely depreciated."

The justification of this warning is now coming home to all Australasia.

In a very thoughtful statement recently made at a public hearing, by Col. Brainerd Taylor, Quartermaster Corps, War Department, he says:

The fundamental basis of a national system of transportation in the United States, upon which a national transportation policy and all transportation laws and regulations should be based, is obviously an arterial system of railways with due regard to the relation of terminal area operations to trunk-line operations and to the coordination of rail, water, air, and highway transportation.

The Interstate Commerce Commission in its report, a few years ago, in No. 18,300, and entitled "Motor Bus and Motor Truck Operation," made the following finding:

Steam railroads are and, so far as now can be discerned, will remain the backbone of the national transportation system. They alone can be relied upon for mass transportation and long-distance hauls of passengers and goods.

In fact, in his report to the commission, filed January of this year, Examiner Flynn makes the following statement:

A witness for the automotive industry testified that nearly 5,000,000 people draw their livelihood directly or indirectly from the production of motor vehicles, the largest manufacturing industry in the United States, and that the railroads derived 3,600,000 carloads of freight from highway transportation in 1929 with a revenue of more than \$500,000,000. These figures impressively show how the steady production of motor vehicles is dependent upon the continuous efficient functioning of the railroads, and correspondingly so is the social welfare of the workers connected with the industry.

This situation is not, of course, peculiar to the automotive industry and a breakdown in railroad transportation from any cause whatever will find serious repercussions throughout the whole industrial and financial structure of the country. Railroads are to the social, economic, and industrial life of the Nation what the circulatory system is to the human body. Any serious vitiation will be reflected throughout the whole system.

The transportation situation must be considered with vision, intelligence, fairness, and courage. Unless this consideration is given and followed by

effectual action, it may well be that, when the present business depression passes and commerce and industry enter upon a period of prosperity that in the normal course of progress will surpass any that has gone before, the national transportation machine will not be able to respond and function with the efficiency required to furnish promptly transportation adequate for the steady and unobstructed flow of commerce. What rail transportation means to the continued prosperity of the country is indicated by the statement of the Secretary of Commerce in 1922 before the commission that car shortages during a number of years preceding and corresponding deficiency in motive power were paid for by tremendous sums in commercial losses and consequent unemployment.

In its report in the 15 per cent case, ex parte No. 103, decided October 16, 1931, the commission says:

It is not enough in this report to deal solely with the 15 per cent increase proposed and out substitute form of temporary relief. Something should be said of the railroad future and what can be done in a more enduring way to protect and stabilize it. The railroads now furnish the backbone and most of the other vital bones of the transportation system of the country, and we believe this will be the situation for a long time to come. We are not impressed with the thought that they are doomed, in anything like the near future, to go the way of the stage coach and canal.

In its annual report to Congress, in December, 1930, the commission says, at page 78:

However, the country still needs its railways and can support them. With the traffic of 1929 the railways were as a whole enjoying a comfortable degree of prosperity, even though they did not reach the full return upon their property which we think would be reasonable. Fortunately for their financial position, their capitalization in recent years has not kept pace with their investment, and the relation of their net income, after interest charges and all taxes, to their capital stock was never better in their history than it was in 1929.

President Calvin Coolidge, in March, 1931, said:

The railroads are a public necessity. The Government, in taking charge of them, has rendered them unable to protect themselves. Public welfare demands an equal chance for them in a fair field.

Secretary Hurley, on November 24, 1930, said:

The expansion of our industries means increased activities of financing and fabricated products. The railroads will always remain the carriers of these products of industry. \* \* \* Whatever high state of development may reach, these railroads will remain the backbone of our national freight transportation system.

Mr. MAPES. You spoke of President Coolidge?

Mr. THOM. I was reading from a statement by ex-President Coolidge.

Mr. MAPES. You spoke of President Coolidge, in 1931.

Mr. THOM. I did not mean that he was President in 1931; but ex-President in 1931.

Mr. MAPES. And you followed that with a statement by Secretary Hurley.

Mr. THOM. Yes, sir.

Commissioner Ezra Brainerd, chairman of the Interstate Commerce Commission, in docket No. 23,400, made the following statement:

The railroads of the country have been and are to-day the backbone of our transportation system. They are essential to our national protection and our economic welfare.

Mr. Horace M. Hill, of Minneapolis, Minn., in his publication "What Price Transportation," has this to say:

No thoughtful shipper or public representative who retains his poise will do or permit anything which will weaken or destroy the essential railroad plant. And our concern for the preservation of the railroad plant will not permit us to neglect the legitimate obligations which have been incurred in the development of these properties.

I think it may be safely stated that there is no important body of public opinion that does not hold that adequate and efficient transportation by rail is, and will continue to be, essential to the public welfare. Congress itself, in section 500 of the transportation act has declared that rail transportation must be fostered and preserved in full vigor and in recent years has never failed to attach as a condition of any provision it thought wise to adopt that the accomplishment of it must be consistent with the maintenance of an adequate and efficient system of transportation.

This appears in section 15a now under consideration, twice in the Hoke Smith resolution, and so far as I am advised, is universally recognized except perhaps in fugitive expressions of opinion which doubtless have been thoughtlessly made.

Considered solely from the transportation standpoint, and in the broad relation which the railroads bear to the public interest, I accordingly think that I may safely proceed upon the assumption that the railroads are, and will continue to be, an essential factor in the adequate distribution of the fruits of human industry. If there be anyone who dissents from this conclusion, he doubtlessly will be interested, as I have been, in a speculation, more or less of a general nature, of what could take its place in land transportation.

The position most frequently relied on is that motor vehicles on the highways can handle the traffic. I am wondering whether those people who are inclined to that view have given adequate consideration to the expanse of highway capacity that would be needed. The most recent estimate I have seen indicates that for the year 1930, trucks on the highways handled about 4 per cent of the ton-miles of the freight, while the railroads handled about 96 per cent at that time. At the end of that year, in the United States, there were 693,559 miles of improved highways.

The point is frequently stressed that the quantity of commerce now handled on the highways by trucks is already over-congesting them and inconveniencing the other users of the public roads. The members of this committee well know the opinion in their several communities on that subject. However that may be, I suppose there would not be much dissent from the conclusion that if there were on the present highways 10 per cent instead of the 4 per cent of the ton-miles, that would be as much as public opinion would tolerate. That would leave 90 per cent of the ton-miles to be provided for by additional highways. At the end of 1930 there were 693,559 miles of improved highways, as I have stated, and only about 4 per cent of the ton-miles moved over them.

Would it not be a conservative estimate to say that it would take at least five times the present highway capacity to take care of the 96 per cent of ton-miles now moving by rail? If so, it would require the construction of some 3,478,795 miles of new highway, which at \$30,000 a mile—said to be considering the country as a

whole a low average of cost—would involve an expenditure of something over \$104,000,000. Moreover, it is proper to consider that a trainload of 2,000 tons is handled by a crew of five; a locomotive engineer, fireman, a conductor, and two brakemen. If these 2,000 tons were handled over the highway by 5-ton trucks, it would require 400 trucks, with at least one man to each truck—over 400 men.

These figures are not given for the purpose of presenting an accurate statement of the situation, but merely to indicate that there are large practical considerations, involving great expenditures that must be taken into view by those who contemplate scrapping the railroads to make way for trucks as the sole agency of land transportation.

Now, how is this money to be provided? It seems that it is generally conceded that the States, municipalities, and counties are about loaded up with the expenditures incurred in providing the present highways. Are they in the mood or in a condition to do more? The Census Bureau shows that in the fifteen years, 1915 to 1930, the gross indebtedness of the States increased 359 per cent, and during the same period the indebtedness of American cities of 30,000 or more population increased 162 per cent. An analysis of that indebtedness shows that a vast amount was incurred in the construction of highways, especially to the states and counties in the country regions, not so large a proportion in the cities.

Starting then from the premise that adequate and efficient railroads are, and will continue to be, essential to the public welfare, I would like to call to your attention, an incident that was most interesting to me, which occurred a few years ago right here in this Capitol. It revealed the view of the users of transportation and their problems.

In the month of May, 1920, a conference of farmers, merchants, grain dealers, cattle raisers, and public utility commissioners appeared before a committee of the Senate to complain of the lack of rail transportation and to ask Congress for an appropriation of \$600,000,000, in order that the necessary equipment might be purchased by the railroads to supply their needs.

In connection with that hearing, Senator Cummins made this statement to his committee:

Gentlemen, on Tuesday morning, a large number of men from the Northwest and the Southeast, representing the farmers, the merchants, grain dealers, cattle raisers, and public-utility commissions appeared before the committee for the purpose of informing us with respect to a very serious situation which exists in that part of the country, and I am quite sure it prevails generally throughout the United States. Their purpose in coming to Washington was twofold: First, to appear before the Interstate Commerce Commission and make such representations as might be necessary in order to secure the best possible distribution of the car and engine facilities of the various transportation companies; and secondly, to ask Congress to do what might be necessary to be done in order to increase the facilities for railroad transportation and their immediate or direct request on this committee was to take steps for the enlargement of the revolving fund of \$300,000,000 provided in the recent railroad act.

There were present at that convention, representatives from Minnesota, Iowa, Kansas, Illinois, Texas, Wisconsin, Missouri, Nebraska, and South Dakota; representatives of the National Grange, and in

many instances several representatives of the various States and parts of the country, which I have mentioned.

They testified at length before the committee. They pointed out that at that time their crops were held by the banks in the various sections of the country as security for loans; that inasmuch as the banks could not ship these crops to market, there was no opportunity for liquidating those loans, and they were facing another crop year with the banks loaded up already with the present crops with inability to get rid of them, and with consequent inability of the farmers to borrow for the purpose of producing the next crop.

They gave instances which were very striking. One man testifying as to fat cattle, said that when a beef got in condition for market, it must be marketed at once, or it would begin to deteriorate, and with that deterioration went loss of value, and that they had their herds of cattle developed up to the point where they were ready for market, and now they were deteriorating and they were losing every day, and one of them testified that the loss which had been sustained and suffered by the farmers in those regions would more than buy all of the equipment which the railroads needed.

I refer to the hearings before the Senate Committee on Interstate Commerce on Senate bill 4373, on the subject of railroad-car shortage, hearings held in May, 1920.

That is the picture, not given by railroad men, of the necessity for rail transportation. It was a voluntary expression from the farmers and users of transportation throughout large sections of the country, of how their highest interests were being sacrificed by their inability to get their products to market.

If then an adequate and efficient system of rail transportation is essential to the public welfare, it seems appropriate to consider the effect of the proposed bills here on the adequacy and efficiency of such transportation.

I, therefore, come first to consider the proposal as to the repeal of recapture.

No real danger from these recapture provisions is anticipated for some considerable time in the future. There is no suggestion that, under present conditions or those immediately prospective, there will be any recapture amounts. The real and the passing danger is from the provision as it relates to the past.

There is more danger from the proposal to amend section 15a and leave recapture for the past untouched than there would be if nothing whatever is done in regard to 15a, because the amendment of the section, so as to repeal recapture for the future and leave it untouched as to the past, would indicate to the public that it is the policy of Congress to insist that steps shall be taken to enforce claims as to the past. Even if it should be the purpose to follow this legislation with other legislation, repealing it for the past, it would be a long time before that could be done and the public reassured. Meanwhile, an immeasurable injury would be done to the prospects of economic recovery at this critical time.

The country is confronted with very large claims for recapture. Mr. Eastman, in speaking for the commission, suggests that they might reach the figure of \$378,000,000. I have a statement before me of figures which were gotten up by the commission some time ago, and is now more or less obsolete, but it will serve the purpose

of illustration. In that statement there was a total excess up to various dates, the latest I believe ending with 1928, estimated at \$431,855,151. That was both halves of the excess, the half that goes to the Government and the half that was to be retained by the carriers. The half that is going to the Government is now estimated at \$378,000,000. It is estimated that that will be distributed among some three or four hundred companies, most of them not the large and powerful companies which are doing the business, but unexpectedly it has worked so as to be more largely due by the smaller and less capable financially of these companies.

In order to enforce this recapture, the law makes it necessary for the commission to find the value of each railroad for each year that the recapture is claimed.

The basis of recapture is the value of the property during the recapture year. In order to enforce it, the commission must find the value for that year, and if there is another year for which recapture is reclaimed on the same road, they must review that valuation and find it also for that year.

The question has been asked why the railroads have not laid up a reserve to meet these amounts. The answer is to be found in the law itself. No one could tell what the recapturable amount was under the law until the commission had made the valuation.

It was not for the railroads to value their own property. It was not for them to make an estimate of what their property was worth, but the condition precedent to any liability for recapture was by the statute made a valuation by the commission.

The commission undertook to suggest to the various railroads that they should pay into the commission a sum based upon their own valuation of their own property. In a very few cases that was done. But the payments in almost every instance were made under protest.

There was no obligation on any railroad to do it. Congress had said that there was no obligation in respect to recapture arising until the commission has found the value of the property and has ascertained the amount of it.

It has been testified here that for the carriers to set up a reserve of an estimated sum would amount to a quasi admission that a certain amount would be due. The books of these carriers are open to the inspection of the commission, and for them to contain the carrier's estimate of a recapturable amount might be interpreted as the carrier's admitting at least this much would have been due. To undertake to set up by guess a reserve to cover recapture would have been an extremely difficult thing to do in the first place, because of the lack of money, and in the second place because of the unfortunate legal consequences which might ensue.

Now, suppose the commission starts to enforce this recapture for the past, and begins to value each year—not the 1914 value; not the 1919 value; not the 1927 value—but to value for each year. Naturally, under the commission's methods of valuation, the valuation which it would reach without proper consideration of the factors which the railroads are advised the Supreme Court of the United States had declared to be necessary, there would be litigation over every one of those claims for the recapture. And the courts would be filled—the Supreme Court included—with that litigation;



but that is not the worst side of it. The worst of it is that if the commission prevailed and judgments in the aggregate for \$378,000,000, or any similar sum, was entered against these railroads, and they were valid, then the next question that would come would be, where would the money come from to pay them?

I have told the committee that no reserves have been set up to meet this claim, and I have told the committee the reason why no reserves have been set up. What then would be the recourse of these carriers to obtain the money to pay these claims? It would be to go out and, in the market, borrow it. They would go into a market at the present time demoralized and incapable of taking care even of legitimate appeals for loans. They would ask to borrow money, not in order to create a new asset, which would be an additional security for the money borrowed, but without creating any new assets; they would go in the market and try to borrow money for the admitted purpose of paying it out and thus decrease their assets.

The committee will readily see that that would be an impossible task.

There is no place where any such money could be borrowed, and the country would be confronted with millions upon millions of judgments without any ability on the part of the railroads to borrow the money to pay them, and with these unpaid judgments, what, in your judgment, would be the effect upon the economic hopes of the country in respect to a business recovery?

Some of my clients say, "We are not in the recapture class. We are, therefore, not interested in this question." I say to them in reply, that, whether you are in the recapture class or not, to have accumulations of judgments unpaid, such as I have referred to, will affect not only the people that owe the money but will affect every other railroad in the country and will affect every business enterprise in the country.

To contemplate for one moment the accumulation of this mass of indebtedness without any ability to pay will carry dismay into the hearts of the most hopeful of our being able to accomplish any economic recovery in the near future.

I do not think that I can overemphasize the importance of the suggestion which I am now making. I do not imagine any greater catastrophe that can happen to the hopes and the efforts of the men that are trying to restore economic prosperity to the country and trying to preserve adequate transportation facilities for the movement of the people's commerce than an effort to enforce these recapture provisions.

To attempt to collect these amounts would not only have the effect that I have mentioned in respect to the business of the country but it would have this additional effect: It would have an effect upon the ability of these carriers to employ labor. With this adjustment just made at Chicago limited to expire within one year, if you pursue the policy of making these collections from the railroads, what would be the effect at the end of that year on the capacity of the railroads to give reemployment and to restore wages?

Another effect it would have would be this: Of course, if the universal bankruptcy which would be involved in an effort to enforce this statutory requirement were to occur, the basis of taxation of these railroads ought to be reduced because their values would be

reduced, and the income of the States, of the cities, and of the counties of the country on which they are dependent for the purpose of maintaining their schools and of conducting the governments would be seriously impaired.

Some questions have been asked which may make it appropriate to consider the status of the recapturable amounts. I have explained so much of that status as is dependent upon the valuation of railroad properties in each recapturable year by the Interstate Commerce Commission, but another question has been asked, important and intelligent, and that is whether or not a trust has arisen in respect to these recapturable amounts which ought now to be regarded by Congress. In connection with that it will be observed that no cestui que trust has obtained any interest in this fund. It is, so far as it has been paid, in the control of the Interstate Commerce Commission. So far as it is unpaid, it is collectible by the Interstate Commerce Commission. But, the statute gives no cestui que trust an interest in it until the commission takes action for its use, and the commission has taken no such action. Consequently, there is no cestui que trust that has secured an interest in it. But, moreover, there is no equitable basis for this trust. The condition which justified the enactment of it, in the opinion of Congress, was that rates would under the new statutory policy be increased, up to the point of giving a fair return on the values of these properties, and that the consequence of that increase in rates would be that some carriers would earn more than they ought to and the excess should be taken away from them.

Both historically and as a matter of evidence before this committee, it is true that there has been no such increases in rates. It is true that there was an increase in Ex Parte 74 in 1920. There an effort was made to carry out the mandate of this statute and to create rates which would have the effect which the statute contemplates. Almost immediately those rates were abandoned, some of them by the carriers, many of them by the commission, and the whole basis of Ex parte 74 was disregarded and dismissed because rates must give way to economic conditions and can not be made on value.

Commissioner Eastman has come here and testified that the rates which the carriers have been operating on have not been affected by section 15a, but were made from the considerations which would be applicable independently of section 15a.

Mr. Benton, for the State commissions, has given similar testimony, so that the equitable basis of a trust is entirely lacking. Congress did not say that independently of the increased rates which were called for by section 15a any carrier that earns over 6 per cent should have its money taken away. It said that when the commission increases the basis of rates so as to correspond with the mandate of section 15a, and the carriers earn more under that condition than they would under conditions independent of the statutory requirement, some of those earnings are recapturable and constitute a trust fund.

But, inasmuch as that statutory level of rates has never been put into operation; inasmuch as that anticipated, that predicated, result is one that has never followed, but the carriers have been operating under rates which were normal and made under conditions of eco-

conomic pressure, and economic necessity, the trust which was proposed by section 15a has never arisen, and there is no difficulty in dealing with it from the standpoint of an alleged trust.

If a trust had arisen, still, it would be in the power of Congress to cancel it, because no cestui que trust has acquired an interest in it. To those gentlemen who feel that there ought to be some consideration given to the question of a trust, I submit that the entire equitable basis of a trust, whatever may be its legalistic or technical form, is lacking, and accordingly there is no difficulty in repealing the statute.

I have before me a statement showing the results of the operations of these railroads for 1919 to 1930, in the United States, considered as a whole; in the eastern region, which includes the Pocahontas region; in the southern region, and in the western region.

For the United States as a whole, there has been no year during that whole period when the statutory percentage, set as a measure of fair return, was realized by the railroads.

In the eastern district, which includes the Pocahontas, there was one year when the return was 5.90 instead of 5.75 per cent, and that was the year 1928.

In the southern district there were two years, 1925 and 1926.

And, in the western district, there was no year.

The fact that in the years I have mentioned there was an excess over the 5.75 per cent in one year in one of the regions and in two years in another, is completely explained by the difference in traffic conditions in those particular years and not by any difference in rates.

Taking the first, the eastern district, which includes the Pocahontas, if you deduct the Pocahontas region from the eastern region, the result of that part of the region that is left is far below the 5.75 per cent, but, why was it that, in one year, during that time, the percentage which the eastern group construed as including the Pocahontas region, was slightly exceeded? Here is the explanation: This is taken from Mineral Resources of the United States, 1926, published by the Department of Commerce, Bureau of Mines.

Speaking of the movement of bituminous coal—and that is what comes from the Pocahontas region—throughout the last half of the year—that is, the year 1926—and the year in question here where the percentage was exceeded.

\* \* \* Throughout the last half of the year a great off-shore demand was one of the dominating influences in the coal market. The foreign demand was unusually intense because of the seven months' suspension of production in Great Britain. The general walkout of the British miners on May 1 immediately started discussion of exports from this country. In May sea-borne shipments increased approximately 28 per cent over the April figure, the June total was about twice as large as that of May, and July more than doubled the June total. There was a continuous increase each month, until a record of 3,722,095 net tons was reached in November. For the year the total sea-borne exports of bituminous coal reached 21,510,000 net tons, an increase of approximately 450 per cent over 1925 and a quantity only slightly under the record set in 1920.

So that that shows that there was an extraordinary increase in coal traffic from the Pocahontas region in the year 1926, due to world causes, and the reason that the 5.90 per cent was realized by the eastern roads was because these Pocahontas roads, serving the bituminous region had the tremendous increase of traffic just mentioned.

Now, as to the southern district, the fairly good financial showing of the carriers made in the southern region, during the years 1925 and 1926, and for a few years immediately preceding is traceable directly to the Florida land boom. Economic conditions in Florida had been improving steadily for some time, but a sudden prosperous condition was achieved in 1923. During 1924 and 1925 wild speculations in vacant real estate occurred but in the early part of 1926 a severe reaction followed. Despite the 1926 let-up, in the real estate market, a large amount of road building and public improvement work was under way. This activity continued to hold up the volume of traffic for the southern carriers. Thus the large expansion of construction work in Florida directly contributed to and caused the temporary prosperous conditions of the southern carriers at that time. So that the Florida traffic accounts for the returns of the southern groups in the two years that I have mentioned where the 5.75 percentage was exceeded.

Not the rates, but a large sudden excess of traffic was the cause; and, consequently, there is nothing to sustain the position that the carriers have earned in any region a fair return on their property as defined by Congress and as made the basis of recapture in a single year which is attributable to rates that were put in, in consequence of section 15a.

I would like to refer in this connection to one or two of the absurd situations that arise because of the effort to enforce this recapture provision.

Mr. Bledsoe's testimony showed you how it was with the powerful Atchison Co., that although there were two years when recapturable amounts were claimed, yet taking all of the years together, from that time to this, there was a tremendous deficit over a fair return. That is an illustration from one of the strong roads of the country.

I come now and present to the committee a record of the commission in the case of the Salem, Winona & Southern Railroad Co., a small company. Here is the commission's report finding the amounts due. They made a valuation of the road, and may I digress here to say that the finding which I read from, in the previous exhibit, shows the results in the various districts based, not on the valuation of the carriers, but on the valuation of the Interstate Commerce Commission. The figures in that exhibit were based upon a valuation of the commission made by groups for the purpose of Ex Parte 74, and to that valuation was added the admitted additions and betterments that had been put upon the various properties subsequently thereto, so that the preceding figures I read from that report, referred to a valuation of the commission's made in a manner that I have now described.

But here, in this Salem, Winona & Southern Railroad Co., the complete report of which I hold in my hand, there was a valuation of the commission of its properties in each of the several years, and they vary as between the years. That valuation varies, it is interesting to note, from \$118,100 in 1920 to \$112,000 in 1928, showing the commission makes the value for each recapture year.

Now, what was the result? The result was that the commission found that, for the 10 months of 1920, there was, in the case of this carrier, an excess over 6 per cent on the value it found of \$3,763.98.

and that for the year 1926, that there was an excess over 6 per cent on the value ascertained for that year of \$5,614.22.

The report covers nine periods. The last 10 months of 1920, and all of the years down to and including 1928.

In two of those periods, the commission found these small amounts, as I tell you. In one case it was \$3,763.98, and in the other \$5,614.22, or an aggregate of \$9,378.20.

In the other seven periods the commission found that there was a deficiency under the 6 per cent. In the aggregate, those deficiencies amount to \$82,000.98, against the amount of excess claimed in two of the periods of \$9,378.20.

In other words, as to this little road, enforcement of this law would mean that for the two periods mentioned the road must pay one-half of the \$9,378.20, and in the other seven periods it had a deficit of over \$82,000.

Now, somebody may say that means that it was a bad basis taken, this 1-year basis; that there ought to have been a longer period, but what about that? If you can change your period, I believe you can change your trust. If it is in your power to change your period, it is in your power to change your trust, because the period is an inseparable part of the trust.

In my judgment there is no doubt about your power to repeat these recapture provisions. And, the fact is that these recapture provisions are now recognized as a legislative blunder. It was thought so by this committee in 1920. It has now been testified before you by the Interstate Commerce Commission; by the State commissions; and by the shippers, represented by the National Industrial Traffic League.

It is now being testified to, to you, by the class 1 carriers. I am told that that will be followed by the short lines, and their representatives tell me that they will take the same view.

If it is a blunder; if it does have the effect and hangs as a pall upon the possibility of the restoring of prosperity to this country; if the catastrophe of these judgments is anywhere near the magnitude that I understand it to be, why not, when you have the chance, correct the blunder, and ask Congress to take the steps which this committee urged it to take in 1920, and get rid of the thing that will be second only in disaster to the great depression which is now overhanging the country?

Mr. BURTNESS. I would like to ask you one question.

Mr. THOM. Yes, sir.

Mr. BURTNESS. On the testimony that you gave with reference to the road, the name of which I do not recall—

Mr. THOM. Salem, Winona & Southern.

Mr. BURTNESS. But, which shows the unfairness of the recapture clause for particular years, peak years and lean years, can you tell us what the result would be if the tentative suggestion of Mr. Bledoe, made the other day, in his statement, were followed and they treated the entire 11 years and some months' period as the time for determining whether or not there was excess income during the period as a whole. Would that company then be among those roads that would still have to pay under the recapture clause?

Mr. THOM. That company would not. There would be a \$73,000 deficit.

Mr. BURTNESS. That is what I wanted to know.

Mr. THOM. Over the amount of the recapture fund. That is so of the Atchison. You asked the question, Mr. Burtness, the other day, as to whether that was so of all of the roads.

Mr. BURTNESS. I do not think that I asked that in the record, but I know some of us were discussing it generally after one of the sessions was over as to what the situation would be with reference to the railroads as a whole, and it is one of the questions that I do hope we can get very definite information on before the hearings close. At least, I would like to have it, to find out just what the practical situation would be if Congress should decide to repeal the recapture in all cases except those where, for the entire period of 11 years and some months the individual railroads have earned more than the 6 per cent.

Mr. THOM. That would not solve all of the cases. There would be still some cases, where, if the average was to stop now, there would be recapturable excess.

Mr. BURTNESS. Then, if that is the case, why should not those railroads that have earned more than 6 per cent during all of the period be called upon to pay that excess under the law?

Mr. THOM. Well, I discussed that question before you came in. I will discuss it again, however.

Mr. BURTNESS. I do not want you to do that, because I expect to read your testimony.

Mr. THOM. I pointed out the great disaster that would be, not to the railroads, because I mentioned that—I mean, as to their private interests—but I am asking no consideration of this problem from the standpoint of saving their owners. I am asking what I ask only from the public standpoint, and I tried to show that to insist on this recapture amount, whether on an average, as you stated, or as the law is now written, would be to set back the prosperity of the economic recovery in a way that is perfectly appalling to contemplate.

Mr. BURTNESS. Even though the requirement for the excess would apply only to roads that, both during the good and the bad times that we have had for 11 years, have received an average return of more than 6 per cent every year.

Mr. THOM. You would have, then, all of the litigation; you would have then the judgments; you would have the inability of those railroads to pay; you would have no market in which they could get the money. The whole money market is demoralized and it would be a blow even in that event.

Mr. BURTNESS. Of course, many of the cases would be wiped out.

Mr. THOM. Some.

Mr. BURTNESS. You say some. The testimony during this hearing would indicate that most of them would be, at least of the smaller ones.

Mr. THOM. I think that any sum that any member of the committee may have in mind, would be removed when you contemplate a few more years of this depression, all of them would be wiped out.

Mr. BURTNESS. Well, of course, I couple that with an immediate repeal of the recapture provisions for the future.

Mr. THOM. But, if all would be wiped out—if we wait a few years all would be wiped out; but it would all not be wiped out,



if you act now and repeal it for the future, even though you make a general average for the past.

If recapture for the past is now permitted, the effect will be—as I have attempted to show by the statement I have made—to impair the credit of the carriers; to injure the general business of the country, and to indefinitely postpone its economic recovery.

Secondly, to impair the power of the carriers to pay taxes and, as the values of the carriers' properties decrease, the effect would be to reduce the amount of taxes to the public.

Third, to impair the ability of the carriers to pay wages to their employees.

I now come to the discussion of the proposed rule of rate making in the event recapture is repealed. It is necessary, in connection with that, to consider first H. R. 7116, which provides for the proposed artificial rate base. Manifestly, that proposal raises an important constitutional question. That bill provides that you shall make the rate base different from value, and provides that the commission shall so adjust rates as to produce a fair return on that rate base; not on value.

Mr. SHALLENBERGER. Colonel, just what do you mean by saying that the rate is not to be based on value, but something else?

Mr. THOM. Because that is the way the proposed rate base is constructed. It is constructed without reference to matters which the Supreme Court says must be taken into consideration in reaching value, and they do not pretend that it is value. Their idea is this, and their suggestion is, that it is not of consequence what your rate basis is, because you can adjust the revenues by changing your percentage. That was the argument.

But, when they come to write that out into the form of a bill, and present it here, they say that a rate base admittedly different from value, must be established, and then that the duty of the commission under the mandate of the Congress is to find what would be a fair return on that rate base.

Now, I do not think that the commission is anxious to meet that problem. The fact is, that rates are not made by rate bases and are not made by value, and can not be. Rates are the outgrowth of economic force. If a carrier attempts to fix a rate and sustain it in spite of the economic conditions with which he has to deal, he loses the traffic.

If the commission makes a rate by any method which is not in accordance with the economic needs of the country, it fails, and students of this question now to a large extent agree that rates are not made by rate bases and are not made by values, but are made by the estimate which the rate-making body has of the operation of the economic forces which controls the commerce of the country.

Mr. HUDDLESTON. May I ask whether you mean by that, "what the traffic will bear"?

Mr. THOM. That is one way of putting it, Mr. Huddleston, if you mean by that, what the traffic will move under. That would be the way that they would arrive at it. But, why put in the law a provision as to a rate base which we think can not be sustained constitutionally when the thing, if it is there, will not make rates, and I think that the commission thinks that; but if it is there,

and it is a false measure of making rates, there is at once the right to contest it for constitutional reasons.

Now, the commission has power to make rates. Why give them a formula by which to make them? Especially if the formula is invalid.

Mr. SHALLENBERGER. Colonel, does not the commission get its right to make rates from the fact that it must be just and reasonable, upon the value of the property? Is that not what was said in the Smyth case?

Mr. THOM. My own judgment, Governor, is that rates are made from economic necessity.

Mr. SHALLENBERGER. I agree with you there.

Mr. THOM. One second. I want to complete that, if you will allow me.

Mr. SHALLENBERGER. All right.

Mr. THOM. That if they are so low that they do not constitute a fair return on the value, and are made by a Government authority, then the carrier can contest the rates on the ground that they do not give a fair return; but still, the rates are not made by value. They are made in obedience to the operation of economic laws, a law which no ukase of an arbitrary power, which no edict of kings, which no enactment of parliament, can alter. These economic laws are as irresistible as the rising of the tides in the sea.

Mr. SHALLENBERGER. Does not the justness and reasonableness of the rates still go back to the value?

Mr. THOM. That only goes back to value, as a measure of confiscation. Of course, it has always been held that the Government could not make a public servant perform services at rates that are below the confiscatory level and valuation comes in in that way, and in my judgment that is the only way that valuation can come in.

Now, I have said that this House bill 7116 involves serious constitutional questions. That is made certain by this expression of the Supreme Court of the United States, in the *United Railways against West* (285 U. S. 254), where the court said:

It is a settled rule of this court, that the rate base is present value.

H. R. 7116 attempts to make something different the rate base.

The CHAIRMAN. Mr. Thom, would you like to believe that the decision in that case was the last word of the Supreme Court on the question of rates?

Mr. THOM. I am very certain that it is the last word on that particular law.

The CHAIRMAN. You think that is correct law?

Mr. THOM. I think that is correct law, if there is any such thing as a rate base. My difficulty in respect to a rate base, certainly is that rates are the outgrowth of economic conditions, but, if there is a rate base, then it is value. Now, suppose that you do not put any of that formula into your act. The Interstate Commerce Commission can proceed by any method it pleases to make rates, if you prescribe no definite rule, and the only objection that a carrier can have is as to the result.

We have got nothing to do with their methods, provided that the methods that they must follow are not invalid methods which they must follow in obedience to the mandates of law. But as to their

deliberations, in the absence of a statutory formula, as to why this rate should be made, or that rate should be made, or the reason for making it this way or that way, of course, the carriers have nothing to do, unless it gets to the level indicated by Governor Shallenberger, where the returns from those rates are less than a fair return upon the value of their properties.

Mr. HUDDLESTON. May I ask whether you interpret that case as holding present value as the only factor?

Mr. THOM. Oh, I think this present value; I think that you have in your mind a question as to the elements that go to make up present value.

Mr. HUDDLESTON. No; I have present value alone, whatever the elements.

Mr. THOM. Whatever the present value is, is the basis on which a return must be made.

Mr. HUDDLESTON. In deciding whether it is a "fair return."

Mr. THOM. Yes, sir.

Mr. HUDDLESTON. That is to say, as protected by the Constitution?

Mr. THOM. Yes, sir; present value is what they have to consider. I mean that the rates in existence at the time must make a return for the then owner on the then present value of the property.

Mr. HUDDLESTON. You interpret that case as so holding?

Mr. THOM. And every case.

Mr. HUDDLESTON. The one you read an extract from.

Mr. THOM. That case certainly says so, and every case for the last 30 years, that I have seen from the Supreme Court says the same thing.

The CHAIRMAN. What I would like to know, Mr. Thom, if you believe in order to arrive at a just and reasonable rate, all of the elements must be taken into consideration that were taken into consideration in that case.

Mr. THOM. Only those? I do not quite get your question, Mr. Chairman.

The CHAIRMAN. I say, is it your judgment, in order to arrive at a just and reasonable rate, all of the elements that were taken into consideration in that case should be taken into consideration in every case?

Mr. THOM. I do not think that there is any doubt but that all of them ought to be taken into consideration, whether they are the only ones or not; but all of them ought to be taken into consideration, and I think that has been settled law since 1899, as to the things that a rate-making body should take into consideration in making rates.

I think value is a matter of judgment, and I think rates are a matter of judgment. I do not think either are matters of formula. And the minute that we get away from that idea of rate fixing being a matter of judgment and put it into a formula, we get into trouble.

The CHAIRMAN. Well, that is what this case did, was it not?

Mr. THOM. What did you say, Mr. Chairman?

The CHAIRMAN. That is what this case did, was it not?

Mr. THOM. The court so said in that particular case, and in that particular instance, treating that particular subject, and in those particular circumstances that was the thing to do, but they have never said under all cases and all circumstances, those are the only

things to consider. What must be considered are the matters which arise from facts that pertain to a particular situation, and all of those must be weighed, and you will never find the Supreme Court saying, in my judgment, that any diversified situation like the railroads are in, where they have to deal with a great multitude of commodities and render numerous services as to each one—not like a gas company that furnishes one commodity, or an electric company that furnishes one commodity, but where they handle a great number of commodities—I do not believe that any human intelligence will be able to ascribe a set percentage to the several considerations that must control a judgment in respect to those matters.

Mr. HOCH. Colonel, it does not simplify the question of valuation, does it, to say that the value to be considered is present value? The question, essential question, still remains as to what is present value. You have the same controversy under the term, the present value, after you use it, substantially as you had before using it.

Mr. THOM. Yes. I shall ask this committee, before I am done, to consider the repeal of the valuation statute. I am definitely of the opinion that the only present office of valuation is a measure of recapture. If you do away with recapture, you do away with the necessity for valuation. When valuation then comes in, it must be introduced by the persons that claim that they are not receiving a fair return upon what its real value is, and they must prove it.

But, I will not anticipate that part of my statement by going into it at length now. I am merely preparing the minds of the committee for one of the contentions which I will make in that connection.

Mr. MAPES. Mr. Thom, it is almost time for the bells to ring, and there is one question which you have covered that I would like to ask about. It has been answered in a way, but I am not quite sure that it has been answered definitely.

If a road is subject to the recapture provision during the last 11 years, when has the average road found that out? Has it known it from year to year, or has it been—

Mr. THOM. It could not know it until they know the valuation of the commission for that particular year.

Mr. MAPES. When has the commission itself determined that a road was subject to recapture, in 1922, for example?

Mr. THOM. As it gets to that part of its work and performs it.

Mr. MAPES. And when was that, as a rule?

Mr. THOM. They have given exceedingly few valuations to cover recapture. The great majority of those years have not been covered.

Mr. MAPES. So that it is possible or probable that a road might be subject to recapture in 1922, for example, and still not have that fact determined by the commission?

Mr. THOM. Perfectly so.

Mr. MAPES. Is that the rule, or the exception?

Mr. THOM. Well, that would require me to have a more intimate knowledge of what the work of the commission is, of the status of the work of the commission, than I really have. I can not tell that with definiteness, but I know that there are many roads that do not know yet what their values were in 1922, and whether or not there is any recapturable excess.

Mr. MAPES. And they are roads situated like the one you mentioned, that are included in the \$378,000,000, or go to make up the \$378,000,000 estimated?

Mr. THOM. I think so.

Mr. MAPES. It has then been impossible for them to set up a fund for the purpose of meeting the recapture claim?

Mr. THOM. Yes, sir. Suppose that they had set up an amount, or possibly had undertaken to set up an amount, and said, "We will set up a reserve fund on our own values," and then the commission comes along and values the property very much less than what their value was, and then their reserve fund would not be adequate to take care of it.

Shall I proceed, Mr. Chairman?

The CHAIRMAN. No, Mr. Thom; it is now time for us to close. You will be ready to-morrow morning at 10 o'clock?

Mr. THOM. Yes, sir.

The CHAIRMAN. We will take a recess until 10 o'clock to-morrow morning.

(Thereupon, at 11:45 o'clock a. m., a recess was taken until 10 o'clock the following morning, Wednesday, February 3, 1932.)

## RAILROAD LEGISLATION

WEDNESDAY, FEBRUARY 3, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

Washington, D. C.

(The committee was called to order by Hon. Sam Rayburn, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

**STATEMENT OF ALFRED P. THOM, GENERAL COUNSEL OF THE ASSOCIATION OF RAILWAY EXECUTIVES, AND THE AMERICAN RAILWAY ASSOCIATION, TRANSPORTATION BUILDING, WASHINGTON, D. C.—Resumed**

The CHAIRMAN. All right, Mr. Thom, you may proceed.

Mr. THOM. Mr. Chairman and gentlemen—

The CHAIRMAN. Mr. Thom, if I may interrupt you before you start. Mr. Jones tells me that the Short Line Railroad people are here in their conversation, and they would like to go on to-morrow morning, and as I understand, you will be willing to stand aside for them.

Mr. THOM. Certainly, Mr. Chairman.

The CHAIRMAN. Then the Short Line Railroad people will come on to-morrow morning at 10 o'clock.

Mr. THOM. Mr. Chairman and gentlemen, when adjournment was taken yesterday I was asking the attention of the committee to the bill H. R. 7116, which provides for a rate base for rate making.

The CHAIRMAN. There is a good deal of talking in the committee room. We can not have that, because the members must hear what the witness says.

Mr. THOM. The rate being constructed on an artificial basis, and as I attempted to point out, without regard to the rules which the Supreme Court says must be considered.

I pointed out what I conceived to be the grave constitutional question, which would arise if any such method was adopted, and I also undertook to point out that even if a rate base was created it would have no value in rate making, because rates were not made on bases or on values but are the outgrowth of economic conditions.

Inasmuch as that bill seems not to be urged by the commission and practically has been abandoned here by them, I shall not take up the time of the committee in further reference to it but shall pass on to the bill which the commission did emphasize and which all of the witnesses here emphasized, H. R. No. 7117.



If it is important in the public interest that the railroads be kept adequate and efficient, it is important for some rule to be made that will accomplish that result. This is especially true because of the strict regulation to which they must submit in respect to their management.

Some idea of the extent of regulation I will attempt to give in a brief way. In a letter which I wrote to the chairman of the Committee on Interstate Commerce of the Senate in reply to a request from him for an expression from the Association of Railway Executives in regard to the Howell bill, I said this:

There is no danger to the public from strong and prosperous railroads. Even if they had the purpose to oppress, they are already so regulated as to make oppression impossible.

With their rates under present regulatory powers, fixed or controlled by the Government and not by the carriers; with the question of what amounts to a "fair return" on the carriers' transportation property determined by the Government and not by the carriers; with the value of the transportation property on which the "fair return" is to be estimated, fixed by the Government and not by the carriers; with the question, as related to rates, of whether the management of the carriers is "honest, efficient, and economical" and "the expenditures for maintenance of way and structures" are "reasonable" determined by the Government and not by the carriers; with the question of whether or not stock or bonds are to be issued by the carrier and if so, in what amount, determined by the Government and not by the carrier; with the character of the accounts it may keep and its method of accounting determined by the Government and not by the carrier; with all unjust and favoritism against, or in favor of, any of the carriers' patrons strictly prohibited and prevented by the Government—can anyone reasonably contend that the carriers engaged in interstate commerce are not now, under existing law, strictly and completely regulated, or that any interest of the shipping public is not adequately recognized and protected?

Now, with those limitations upon the carriers, fixed immutably by law, the question of what their earnings ought to be should be so determined that they can give to the public what is essential to the public welfare, and that is adequate and efficient transportation.

The question was asked whether this whole matter could not be arranged by simply repealing section 15a and going back to the rule of section 1 of the interstate commerce act, which provided merely that rates shall be just and reasonable.

Of course, at the outset, we must realize that that makes the regulation of railroads a Government by men and not by law. What will be determined, without any guide as to what the administrative duty shall be, by any administrative body, will, of course, depend upon the character of the administrative body at any particular time.

Mr. NELSON. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Nelson.

Mr. NELSON. Colonel Thom, in your opinion, would that meet the constitutional requirements and set up a suitable standard so as to make the duties administrative rather than legislative?

Mr. THOM. That has been held to be so, that the simple requirement that rates shall be just and reasonable would be sufficient to satisfy that constitutional requirement.

Mr. NELSON. That is, as to the constitutional matter?

Mr. THOM. That is as to the constitutional requirement. It has been held that is a sufficient measure.

Mr. HUDDLESTON. May I ask you a question?

Mr. THOM. Yes, sir.

Mr. HUDDLESTON. We have a school of thought in this country that has insisted strongly against congressional rate making; in the logic of things, is not this provision for which you are speaking, in line with their objection?

Mr. THOM. No, Mr. Huddleston. I am as much opposed to congressional rate making as anyone could be, and what I am advocating will in no sense be subject to the criticism that it would be congressional rate making. I shall attempt to explain why.

As I say, if a rule which simply provides that rates which are just and reasonable is adopted, it all depends upon the character of the Interstate Commerce Commission and of the several State commissions at any given time as to what the standard of reasonableness will be.

In this connection we must bear in mind that there is no such thing as only a single reasonable rate. Mr. Justice Brandeis has discussed that question and has said that there is a zone of reasonableness made up of many rates between the lower level of reasonableness and the higher level of reasonableness. He did this in the case of the American Express Co. v. Caldwell (244 U. S. 624).

Mr. NELSON. 244 U. S.?

Mr. THOM. 244 U. S., 624.

There he recognized that there must be a zone of reasonableness. The lowest limit of that zone is confiscation. Go below that lowest reasonable rate, and there is confiscation. Go above the highest rate in that zone, and there is too great a charge on the shippers, but all within that zone, all of the rates within that zone, are reasonable.

Now, what rate shall be selected from that zone by the administrative body? We say that the rule should be announced by Congress that the administrative body shall select the reasonable rate from that zone that will guarantee to the public an adequate and efficient transportation system—not the one that just escapes starvation; not the one that will be too high a charge upon the shipper; but the one—and that will vary with different conditions of traffic—the one that will at all times insure to the American people an adequate and efficient system of transportation.

Mr. HUDDLESTON. I gather from what you have said that it is the office of these clauses in 1, 2, and 3, in 7117, to push this rate into the higher parts of this zone.

Mr. THOM. Into the part that is necessary to secure adequate transportation and no further.

Mr. HUDDLESTON. Why emphasize "adequate transportation" instead of economy or some other factor?

Mr. THOM. Economy is made a condition in these articles that you refer to. I shall discuss those.

Mr. HUDDLESTON. It seems obvious that the effect of those clauses is to push the rate above the middle line of this zone.

Mr. THOM. It is to push it only to the point that is necessary to furnish the public what it needs, adequate transportation and efficient transportation.

Mr. HUDDLESTON. Of course, "adequacy" is always a matter of relativity. There is no perfection, so that there is room for difference of opinion on that subject.

Mr. THOM. You can not regulate without having some room for judgment, but you can not properly regulate the system of trans-

portation down so that it can not move without the Government undertaking, in your system of regulation, to see that what is done does not deprive the public of adequate and efficient transportation.

Now, I want to go to those three elements I have just referred to, and trace their origin and see where they have come from.

Mr. GARBER. Mr. Chairman, before leaving that phase of it, may I ask a question? You are not stating the purpose of the recapture, are you?

Mr. THOM. No, sir; I am stating now the purpose of the discretion which shall be given by Congress to the administrative body in making rates.

Mr. GARBER. Well, am I correct in stating that the purpose of recapture was to take revenues if earned from the stronger roads and use them for the aid and assistance of the weak roads?

Mr. THOM. The purpose of recapture was—the basis of recapture was that that special plan of statutory regulation would require rates to be higher than they ordinarily would be.

Mr. GARBER. Well, but the purpose of the higher rate was to help the weak roads, was it not?

Mr. THOM. Yes.

Mr. GARBER. Now, as I understand it, that is an essential feature of the Brandeis zone proposition.

Mr. THOM. No.

Mr. GARBER. Well, for instance, you say to take a zone rate.

Mr. THOM. I say to take a rate from the zone of reasonableness.

Mr. GARBER. Yes; that would insure adequate railway facilities for the public interest.

Mr. THOM. Yes.

Mr. GARBER. Well, that presupposes that some rates would be too low, does it not?

Mr. THOM. No.

Mr. GARBER. It assumes there will be no rate within the zone that is not compensatory?

Mr. THOM. No; it assumes merely that the revenue derived from the body of rates will produce revenues sufficient.

Mr. GARBER. Well, you are putting them all into a zone now and taking the average rate that will insure to the public adequate railway facilities—

Mr. THOM. We are not taking any average rates. We are selecting. What I am trying to advocate is the selection, from the zone of reasonableness, the several rates applicable to different classes of traffic that would be reasonable for their movement and in the aggregate would afford sufficient revenues to insure to the public adequate and efficient transportation.

You will see in these bills, you will see in what I have to present, that notwithstanding what is said in regard to the criteria which the commission is to consider in fixing rates, that there is perfect latitude given to them in the matter of considering and fixing any particular rate.

Mr. GARBER. Well, I am asking these questions, Colonel, upon the assumption that the recapture clause would be repealed.

Mr. THOM. Yes.

Mr. GARBER. And that then I want you to state what you had in mind to take its place, to carry out the theory of the zone rate system, which you have just now commented upon.

Mr. THOM. I can not think anything, Mr. Garber, is necessary to take its place.

I am talking of it now as if it were out of the picture, just as you have described it, and I am describing what I believe to be a wise system of dealing with this question by Congress in respect to the making of rates.

The discussion which I am making also contemplates, because bill 7117 contemplates, the removal of value as a base, so that the question comes back, What shall be the rule? What shall be the policy of Congress in respect to rate making? Not that Congress shall fix a rate, but what expression of policy shall it give to its agency in respect to fixing rates?

Congress has done that in a number of instances. In the present act, section 500 of the transportation act, it is declared to be the policy of Congress that rail and water transportation shall both be fostered and preserved in full vigor.

Mr. GARBER. In view of the constitutional restriction, how can value be eliminated from the consideration in fixing rates?

Mr. THOM. It comes in only when the question of confiscation appears.

Mr. GARBER. Yes. That is true. But there must be a foundation on the part of the administration for fixing the rates, must there not?

Mr. THOM. When you fix the rate, that will guarantee to the public adequate and efficient transportation; that means that you have got to fix a rate that will enable the carriers to get the money necessary to provide the facilities; and as the commission has said, it is difficult to see how any confiscation can exist when, from the treatment of an enterprise, in such a way that people are willing to continue to put their money into it.

Mr. GARBER. That was with due regard to the restriction of the Constitution.

Mr. THOM. Everything is with due regard to the restriction of the Constitution; but when the result of what the commission has done and the revenues are taken is that you still have less than a fair return on the value of your property, the Constitution does open the door and says that you can have that question raised and determined by a court as to whether or not the administration of the traffic policies have been so restrictive as to confiscate the property.

Mr. HOCH. Colonel, I do not want to anticipate your argument as to the rule of rate making, but I would like to get your general viewpoint to help me to understand your approach to it.

Is it your view that the provisions which this bill which you are discussing (H. R. 7117) contains as to the making of rates sets up a new rule of rate making as distinguished from what the law was prior thereto, or that it simply gives criteria to the commission for special consideration in discharging their duties in the making of rates?

Mr. THOM. It is a definition by Congress of its policy in respect to the making of rates. Of course, those things ought to be taken into consideration anyhow, but there is no assurance that they will be

taken into consideration by any particular commission unless Congress says that is its standard or its policy.

Mr. HOCH. That is to say, assuming the validity of Justice Brandeis's view as to a zone of reasonableness, or rather the Congress suggests to the commission, or directs the commission that in determining where rates shall be placed within that zone of reasonableness, they shall give special attention to the things set out in this act.

Mr. THOM. They shall give attention to them.

Mr. HOCH. Now, I may say, I have always been impressed with that idea of the zone of reasonableness, and without intending to bring up any particular controversy, you recall a resolution to which my name happened to be attached, provided, in my view that Congress was to do precisely the kind of thing you are now saying with reference to a certain class of rates. To quote the language of the resolution, the commission was directed to fix farm rates at the "lowest possible lawful rates."

Now, in my view, that was much like the idea you are suggesting here. That is, if in the judgment of the commission there exists a zone of reasonableness, they were to put a particular class of traffic at the lowest part of the zone where there was still a lawful rate. But as I recall it that whole theory of zone of reasonableness was vigorously attacked in the Supreme Court by counsel for the railroads in connection with that resolution.

Mr. THOM. I do not know what counsel did, but the Supreme Court did not repudiate it.

Mr. HOCH. The Supreme Court did say that that did not set up any new rule of rate making. Of course, I did not think that it set up any new rule of rate making. But it did set up a direction to the commission in the exercise of its powers to fix just and reasonable rates, that it should in this particular class place those rates at the lowest portion of the zone of reasonableness.

Mr. THOM. That is consistent with the adequacy and efficiency of transportation.

Mr. HOCH. That was a part of the resolution.

Mr. THOM. That was a part of your resolution?

Mr. HOCH. Yes, sir.

Mr. THOM. I do not attack that view at all, Mr. Hoch. I think that the duty of the commission, in the fair administration of the policy of rate making, defined as it is defined in this bill, would be to consider the effect of particular rates on particular traffic and to attempt to try and readjust the whole business so that the result would be a provision for what the public needs in the way of transportation.

Mr. HOCH. That is to say that Congress, in which resides under the Constitution the power to regulate commerce, has a right to give directions to its agency, which is the Interstate Commerce Commission, a legislative agency, in the matter. Congress has a right, and I think a duty, to set out to its agency the general policy that it thinks should be followed in protection of the public interest in the regulation of commerce. That is clearly to be distinguished from legislative rate making.

Mr. THOM. That is exactly the position which I am trying to express to the committee, Mr. Hoch.

Mr. NELSON. Mr. Chairman, may I ask a question?

Mr. HUDDLESTON (acting chairman). Mr. Nelson desires to ask a question.

Mr. NELSON. Colonel, your idea of this just and reasonable rate proposition interests me. As I understand it, at one time the measure that the legislative body gave the commission was simply one of just and reasonable rates. That rule obtained at one time?

Mr. THOM. That is what it was up to the enactment of the transportation act.

Mr. NELSON. Now, under that system, did the commission use a proper discretion; if not, who were the complainants and on what ground?

Mr. THOM. The carriers did not think that they used proper discretion. They thought that they were being starved.

Mr. NELSON. And, what was the ground of their complaint, where they failed to exercise proper discretion?

Mr. THOM. In not giving rates sufficient to support a proper and adequate system of transportation.

Mr. NELSON. So that you feel that that rule in the past has proved unsatisfactory?

Mr. THOM. Yes, sir.

Mr. NELSON. Do you not think that possibly changed conditions may have given the commission a changed viewpoint?

Mr. THOM. It may have given one commission a changed viewpoint, but you can not tell what another commission will do. It is certain, as Mr. Bledsoe has suggested, not only within the power but, I think, a part of the duty of Congress, to so define its policies that its agents will bring about the results which the Congress thinks is essential to the public welfare.

My contention is that an adequate and efficient system of transportation is essential to the public welfare.

Mr. NELSON. Now, why should we, as a legislative body, setting a standard which the administrative body is to follow—we have two parties in interest, the public and the railroads—why should we call particular attention to items that would protect the railroads as against the public? I am just asking for information.

Mr. THOM. No such suggestion is made here, Mr. Nelson.

Mr. NELSON. To the uninformed it might appear so.

Mr. THOM. Well, I shall try and demonstrate, as I proceed, that that is not the case; that not one thing is asked here for the private interests of the railroads, but that every criteria that is set up—

Mr. NELSON. Wherever you ask anything for the railroads you say that it is in the public interest, but the emphasis, of course, is on those things which will protect the interests of the roads.

Mr. THOM. I shall attempt to show that is not a fair criticism, Mr. Nelson.

Everything I advocate here, in the way of the criteria, is measured by the extent to which the thing is necessary in order to provide the public with the transportation that it needs.

Mr. NELSON. Understand, Colonel, that I am not hostile to the roads at all. I have always attempted to be just to them. I am simply stating the facts as they appear to me, and as I think they would appear to the ordinary layman.



Mr. THOM. I hope to show that is not the aspect in which they ought to appear to the legislative mind.

I want to say, Mr. Chairman, that my explanations are pretty emphatic, but that is only from the heat of the discussion. I hope that the committee will bear with me.

Mr. HUDDLESTON. We understand you, Colonel, and we hope that you understand us.

Mr. THOM. Yes. Now, bear in mind that the general measure of the policy which Congress ought, in my judgment, to announce, is that its administrative agency shall do the things in respect to these rates that will insure the public an adequate and efficient system of transportation. If it is not necessary for that, I am willing for the judgment of you gentlemen to go against me. I am willing to subject it to that one test, and I urge upon you the view that you can not serve and protect the public interests unless you give to the results of human production the facilities for adequate distribution of those products. You can not have a well-ordered society; you can not have an adequate system of government, unless the means of transportation, whatever they are, are up to the point that the public interests require, and I am asking nothing more. I am not asking you to bring into consideration what the railroads would need from their individual standpoint, if they did not occupy this important relationship to the public. But, I am asking you to disregard whatever equity there may be there, and only to consider the question of what rates should be made in order to insure the public an adequate and efficient system of transportation.

I am sure that there is no member of this committee, or of Congress, that would, for a moment, contend that that ought not to be done, that there ought not to be sufficient revenues to insure the public an adequate and efficient transportation system, and I am attempting to advocate language here which will go no further than that, but which will reach up to that standard.

Mr. HUDDLESTON. I would like to ask why you reiterate "adequacy" of transportation; why is such great stress placed upon adequacy?

Mr. THOM. Because, in the past, it has been found to be inadequate and unable to meet the needs of the public.

Mr. HUDDLESTON. They need it if they are able to pay for it. A man may need a \$50 suit of clothes, but if he has got but \$20 then a \$20 suit is what he ought to have.

Mr. THOM. The moment that we admit that America can not pay for it, we have abandoned the competency of our Government.

Mr. HUDDLESTON. "Adequacy" in its fullest means to always have a car ready and to be able to give the very highest degree of service in point of time, safety, and every other element.

Mr. THOM. I think adequacy has a reasonable significance just as every other term in economics has a reasonable limitation upon it. I do not think—

Mr. HUDDLESTON. There is a zone in adequacy quite as wide as the zone in reasonableness of rates, would you not say?

Mr. THOM. No, I do not think to the same extent. I think that there is a way of stating what adequacy means, which carries it to an extreme point and beyond the reasonable needs or expectations of commerce, and there is another way of forming a reasonable

judgment of what adequacy requires, but at least, we know that it is an essential to the welfare and to the safety of the American people that its system of transportation must be adequate.

Now, there is no way of going into court and saying that there is a degree of adequacy which the law requires and have the court upset the intelligent judgment of the commission on that point. We are not attempting here to create a basis for going into court. We are attempting here simply to have Congress initiate a rule which will be a guide to their agency in saying what the needs for transportation are and whether they are at the time being adequately supplied, and also shall declare that the revenues to be derived from transportation must be sufficient to move the commerce of the people and to move it adequately.

Now, I am going on to consider these three criteria and to make some suggestion about their origin.

It will probably be interesting to know the origin of these three criteria which are contained in the bill, H. R. 7117, as presented here by the commission.

I refer you to a letter written by the commission to the chairman of the Committee on Interstate Commerce of the Senate, on January 21, 1931, a copy of which I hold in my hand. In Appendix A of that letter the commission suggests this as a guide to it in rate making—in their letter of January 21, 1931:

As a guide in adjusting the general level of rates, in the exercise of its power to prescribe just and reasonable rates, the commission shall from time to time determine and make public what percentage of the aggregate of the contemporaneous rate bases of the operating carriers constitutes a fair return thereon.

That was what was written in connection with the Howell bill, which had this artificial, and, as I think, objectionable rule of making artificial rates.

Then, the letter, the appendix continues:

In making such determination it shall give due consideration, among other things, (1) to the present and reasonably prospective transportation needs of the country, (2) to the necessity, in the public interest, that the carriers shall be able to establish and maintain a credit sufficient to attract the capital required to meet the transportation needs, and (3) to the necessity, in the public interest, that the carriers shall furnish transportation service to shippers and travelers at the lowest rates consistent with adequate service and the meeting of the transportation needs.

That was the origin of these criteria now contained in H. R. 7117. The commission was there making the suggestion of these three criteria.

Now, let us look a little further and see where they came from. Take the first of them, namely, "to the present and reasonably prospective needs of the country," to which must be given due consideration among other things.

In the paragraph 3 of the section 15a of the transportation act it is provided, in making such determination, the commission shall give "due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation."

Thus, the first one of those provisions was taken from the transportation act of 1920. The second one relates to credit.

On February 1, 1928, Mr. Newton, then a member of this committee, introduced a bill, drafted by Mr. Fulbright for the shippers, and known as H. R. 10,376. The second one of these criteria reads as follows—I mean, in the present bill—

To the necessity, in the public interest, for the carriers to be able to establish and maintain a sufficient credit to attract the capital required to meet and provide for these transportation needs.

In that shippers' bill of 1928, we find this set-up as the instruction to the commission—

In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, have opportunity to earn an average annual net railway operating income sufficient, as nearly as may be, to pay the interest on funded and other outstanding indebtedness, and to provide such return upon the properties devoted to public use not represented by indebtedness as shall in the judgment of the commission maintain a proper basis of credit to enable the carriers as a whole to meet the transportation needs of the country.

So that this reference to credit in 7117 was taken from the shippers' bill of 1928, adopted by the commission in its letter to Senator Couzens in 1931, and now put in the bill which is presented to you for your consideration by the commission.

The third one of these—this is the third one of these criteria—nobody has seemed to criticize it:

(3) To the necessity, in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service, and the meeting and providing for the transportation needs of the public.

Now, it is nothing new for Congress to enumerate things that must be taken into consideration, provided it does not exclude any other matters that are proper for consideration. It was done in the transportation act. It is done in this shippers' bill, which was not passed. It is proposed in the bill H. R. 7117.

I am not wedded to those expressions. They did not originate with me. They did not originate with the carriers. They originated with the Congress, with the commission, and with the shippers.

Now, I am perfectly willing, if anybody thinks there is any difficulty about that word "credit"—I am perfectly willing that instead of those criteria and that part of the bill, which I have read, to have something like this said:

In the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, to the existing needs of the public for adequate and efficient transportation facilities and service, to the necessity for enlarging and improving such facilities and service to provide for the growing transportation needs of the public; to the effect of proposed rates on the movement of traffic, and to the necessity in the public interest that the carriers furnish transportation service at the lowest rates consistent with adequate service and adequate provision for the transportation needs of the public.

What I am contending for and all I am contending for is that there shall be a clear declaration of a policy by Congress that its power of regulation, which undertakes to limit these carriers in every possible way in all their business management and judgment,

shall be exercised so that their revenue shall be fixed by the Government itself at such a level as will insure to the public adequate and efficient transportation.

I am not wedded to my particular form of expression. I am not wedded to that word "credit," though I like it and think it ought to be there, and I advocate what the commission advocates; but just so this direction is made clear and unmistakable that the administrative representative of this body shall administer the laws in such a way as to insure the public adequate and efficient transportation. If it does that, the railroads must take their chance.

Mr. GARBER. May I ask a question there, Mr. Chairman?

Mr. HUDDLESTON (acting chairman). Mr. Garber.

Mr. GARBER. May I interrupt you right there, Colonel Thom?

Mr. THOM. Yes, sir.

Mr. GARBER. I want to ask you this question, whether or not the three criteria, or especially the clause No. 2 would not be included in this provision of the section:

The commission shall, so far as practicable, initiate, modify, establish, or adjust rates so that the revenue derived therefrom will, under honest, efficient, and economic management and reasonable expenditures for maintenance of way, structures, and equipment, constitute a sufficient basis for the maintenance of the national system of railway transportation at all times adequate for the needs of the public.

Of the three criteria as embodied in this general delegation of power, would it not be in the public interest to unload the law of unnecessary provisions and avoid complexities and difficulties of administration as shown by the preceding section of the law, providing criteria. Have not those criteria always been the subjects of controversy before the commission, and before the Supreme Court?

Mr. THOM. I do not think so, Mr. Garber.

Mr. GARBER. Would that not increase the difficulties?

Mr. THOM. I do not think so. And, I do not think that Congress ought to be meticulous in dealing with as strictly a regulated instrumentality as these railroads are, to take out of its directions to its administrative agency anything that will make their duty clear.

Now, if you ask me whether or not those criteria would not have to be applied in applying the rule which you have read, I think they would; but what is the objection, if you are intent upon having an adequate and efficient system of transportation, to making it clear that those are things to be taken into consideration? That does not add to the complexities of the law. That merely goes to clarify and make certain your purpose.

Now, is your purpose there? Is that a proper legislative power to create a system under which there shall be an adequate system of transportation?

Mr. GARBER. I think in the first place, it is generally conceded that an adequate system of railways is essential to the commerce of the country. That is generally conceded.

Mr. THOM. I think so.

Mr. GARBER. And ample provision should be made for their maintenance and for their upkeep and for their development along with the needs of the country. There is not any controversy, so far as I ever heard, in reference to those two premises, which you have been elaborating upon. I think that is generally conceded.

Mr. THOM. I think so. Now, that being true, it ought to be made as clear as it possibly can that the duty of the administrative body is to accomplish that result, and the mere question that is in your mind, and which you asked me, is whether or not there is objection to enumerating these three things when they may be deduced from the general language which you have read.

I think there is no objection. I think there is a distinct advantage in mentioning them, for the reason it makes clear and certain that those are things that are in the mind of Congress, and those are things that your Honor has just said everybody is agreed upon.

Mr. GARBER. In every application for increases of rates, would not the railroads set up first, for instance, that the rates were inadequate and then quote clause 2, that they were not sufficient for the credit of the roads to attract the capital required to maintain and provide for the transportation needs of the country.

How easy that would be to set up in an application, and how difficult it would be to meet; how easy it would be to introduce evidence to substantiate in part that the credit of the roads was inadequate. It is so indefinite as to what their credit should be, the extent of their credit, and in addition to that, when you would go to the source of the credit you would have to go to the financial interests that are furnishing finances for the roads, would you not? The commission would have to consult the insurance companies and the financial interests of Wall Street that furnish finances to operate the roads whenever there was a proposed change of rates.

Mr. THOM. Now, what is the objection to consulting the people from whom you have to get money? What is the objection?

Mr. GARBER. You think that the commission ought to be compelled to consult the financial backers of the roads as to whether or not the rates and public interests were such—

Mr. THOM (interposing). I think that this is the situation, that the commission ought to consult whoever is the best authority on the subject of whether or not the railroads are in a position to furnish adequate transportation, and credit is one of those elements, but you will observe that in this alternative which I have suggested the word "credit" does not appear.

Mr. GARBER. No. I think that is a marked improvement on clause 2.

Mr. THOM. And, that is done in deference to the questions you asked a few days ago, that you thought that there might be some objection to that word "credit" and to meet that I have suggested the alternative with which we would be perfectly satisfied.

Mr. GARBER. Do you recall the instance that recently occurred in New York, as it was reported in the prints that the mayor was told, inferentially, at least, that the financial interests would refuse to advance to the city necessary loans for a short period because the street car fare rates were unsatisfactory?

Mr. THOM. I have not given any attention to that, Mr. Garber.

Mr. GARBER. Well, I just had that incident in mind, in reference to this situation and it seemed to be applicable.

Mr. THOM. But, this is a practical world. We have got to support these railroads by the constantly putting of new money into them. They can not stand still and yet serve this purpose of keeping abreast of the needs of the public. We have got to recognize

the limitations upon us in getting money, and we have got to try and make a system which will not unduly increase the power of those that have it, will give to these public instrumentalities the power to get so much of it as necessary in order to establish and maintain these facilities.

It is a practical world, and I would like to see what the commission has thought out to put in here, and I do not see any complexities, but in deference to the questions you asked, Mr. Garber, a few days ago, I prepared this alternative so as to leave out this word "credit."

Will you let me read again, will you take the bill, as it is now, and compare it with what I read; take the bill H. R. 7117, beginning at section 2, paragraph 2:

(2) In the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, to the existing needs of the public for adequate and efficient transportation and service, to the necessity for enlarging and improving such transportation to provide for the growing transportation needs of the public, to the effect of proposed rates on the movement of traffic and to the necessity in the public interest that the carriers furnish transportation service at the lowest rates consistent with adequate service and adequate provision for the transportation needs of the public.

Now, that is the alternative which I have drawn in deference to the difficulty which seems to be in your mind, from some of the questions which you asked a few days ago.

Mr. GARBER. Well, I think that is a marked improvement on that clause.

Mr. SHALLENBERGER. Have you recommended as to how that is to be determined?

Mr. THOM. The commission must determine that.

Mr. SHALLENBERGER. The commission decides it?

Mr. THOM. And, when it is determined it can not be set aside by the courts unless it is arbitrary; unless there is no evidence to support it; but if it is a mere matter of judgment, based upon evidence, it is conclusive upon the courts.

Now, this criteria which I have referred to about adequate and efficient transportation has been adopted by Congress and has been a settled policy now for more than 10 years. It was adopted in the transportation act of 1920. The Hoch-Smith resolution had its origin in a resolution introduced by Mr. Hoch in the House, and in another introduced by Senator Smith in the Senate.

In Mr. Hoch's resolution, in the House, there was that limitation that whatever was done under it must be consistent with the maintenance of an adequate and efficient system of transportation.

In Senator Smith's resolution in the Senate, there were those same provisions and when Mr. Hoch and Senator Smith got together and took both of their resolutions, and put them into one, it appeared twice, because it had been in the Senate resolution and had been in the House resolution. There had been no dissent that that was a proper policy of Congress.

Now, I am going to leave that branch of the discussion for the present, because I hope I have had an opportunity of making my ideas clear before this committee on the subject, and I want to go to one other matter before I get to the third proposition, which I wish to discuss.



Mr. MAPES. Mr. Chairman, I would like to ask a question. The CHAIRMAN. Mr. Mapes.

Mr. MAPES. Colonel Thom, may I ask you, do I understand that you and the commission and others have abandoned the notion that the commission can fix rates that guarantee or assure a fair return on the value of the railroad property as a whole of the country?

Mr. THOM. I am attempting, as I shall show you, in the third main point that I discuss, to show that it is very desirable to get rid of valuation altogether, and in what I have drafted I have attempted to leave valuation only as a measure of constitutional protection, and nothing that Congress can do will affect that situation, but it should always be left as a measure of whatever is done that it shall not be confiscatory. It is not in our suggestion a part of the rule of rate making, because rates can not be made on value.

Mr. MAPES. Can you answer a little more definitely? Some of the witnesses—I think that you have heard all of them, have you not?

Mr. THOM. Yes, sir.

Mr. MAPES. Some of the witnesses, as I recall, left the impression with me, at least, that the rate has got to be fair and reasonable, without much reference to the value of the property engaged in the transportation, and that under present economic conditions, and under almost any economic conditions, it is impossible for the commission to fix a rate which will assure the carriers a fair return upon their property.

Mr. THOM. In times of depression, such as we are going through now.

Mr. MAPES. And somebody has cited the experience of some other country—I have forgotten what country it was—where the regulating commission was definitely instructed to allow rates that would permit the roads to earn a fair return and where its commission, in actual practice, were obliged to ignore that provision of law.

Mr. THOM. I think that referred to the law of England.

Mr. MAPES. Yes.

Mr. THOM. And rate making is an intensely practical matter.

Mr. MAPES. Now, if that position is correct, is there not going to be somewhat the same difficulty in charging the commission with responsibility for fixing a rate that will provide sufficient credit to the roads?

Mr. THOM. No.

Mr. MAPES. Is there much difference between fixing a rate which will give fair return on the value of the property and fixing a rate which will enable the carriers to obtain sufficient credit?

Mr. THOM. There might not be, but you will notice in the bill the words "so far as practical" are used.

The bill is drawn on the theory that there are certain things they must consider. Then it puts a further requirement, which Mr. Garber referred to, on the commission as to making the rates, and as a qualification of that requirement there is attached the words "so far as practical," which are inserted.

Mr. MAPES. Do you not think, in order to have an adequate transportation system that the commission must provide rates which will give a fair return on the aggregate railroad property of the country?

Mr. THOM. You mean at all times, or generally?

Mr. MAPES. Generally.

Mr. THOM. I think, generally, they would have to give enough to, have a fair return on it, or you would not get anybody to invest in the property. I think there are times when it is impossible to provide adequate return. And I have got some suggestions to make along that line when we get to it.

Mr. MAPES. If it would not annoy the committee, I would like to have you reread the first sentence of that appendix of the Interstate Commerce Commission to the Committee of the Senate to which you referred.

Mr. THOM. You understand that this first sentence of the commission relates to a plan that was proposed of making an artificial rate base, and they were advocating the theory that it did not make much difference what rate base you had, because you were able to vary the percentage and to make that as high as necessary under any rate base to meet the requirements of the public.

Now, the first sentence you asked me to read has reference to that artificial rate base, contained in the Howell bill, which the commission was commenting on. Here is the first sentence:

As a guide in adjusting the general level of rates in the exercise of its power to prescribe just and reasonable rates, the commission shall, from time to time determine and make public what percentage of the aggregate of the contemporaneous rate bases of the operating carriers constitutes a fair return thereon.

Mr. MAPES. Then, it goes on and suggests standards which are to be set up?

Mr. THOM. To be their guide in determining their percentage.

Mr. MAPES. It does not seem to me they abandon the fair return idea.

Mr. THOM. They do not do what?

Mr. MAPES. It does not seem to me that they abandon the fair return idea on the value of the property?

Mr. THOM. You mean in this letter, or in the bill?

Mr. MAPES. In the letter.

Mr. THOM. In the letter they are asking for a fair return on an artificial rate base which is less than value. That was one of our criticisms of it. But in that letter they were then advocating a rate base. Since that time they have had considerable time to think on this subject and they have come here and practically abandoned the bill (H. R. 7116) which provides for an artificial rate base, and have expressed their contentment with 7117, which has not that provision in it.

Mr. MAPES. Well, to get back to what you said yesterday. You said yesterday something about a rate that the economic conditions would bear, quite regardless of the value of the property used in transportation service, did you not?

Mr. THOM. I said that rates are products of economic forces, and that rates might be so high that no traffic would move under them, and therefore be impossible to get a fair return at a given moment on the value of the property. But, I think it is perfectly feasible to so adjust the general regulations, administration of the general regulating power, that the result over a period of years would be such that there will be a fair return and that the industry will be supported.

Mr. MAPES. After all, do you not have, over a period of years, to make rates that will give the roads a fair return on the value of their property, used in transportation purposes?

Mr. THOM. Unless you can do that, you can not sustain your system of transportation over a given period of years.

Mr. SHALLENBERGER. Mr. Chairman.

The CHAIRMAN. Mr. Shallenberger.

Mr. SHALLENBERGER. There is just one other question. The inclusion of the instruction to the commission to make rates which would support an adequate transportation system would result in an immediate material increase in rates, would it not?

Mr. THOM. You mean that it was in the transportation act?

Mr. SHALLENBERGER. That is the first time it appeared, was it not, that instruction?

Mr. THOM. And they did, in ex parte 74, undertake to make a horizontal raise in rates, and there was a considerable increase in the three regions in the country. That they did in 1920. Then, the commission, next year, began to abandon it under the pressure of economic force. The railroads had to recognize it, and they had to abandon some of it too, giving, as I think, proof of the fact that you can not make rates on values. They tried it once. They valued the roads in the three sections of the country. They determined that a horizontal raise of rates in those three groups was necessary in order to have this fair return, and it was at once found impossible of application and was abandoned by everybody and has not since been attempted.

I will give you an illustration of this: In the Western Grain case, the railroads undertook to enforce the provision of section 15a. They said these western roads have never earned a fair return. We are entitled to the protection of this provision of the statute. They got a restraining order in one of the Federal courts, which was issued on that contention, and after an injunction was denied, they carried that contention to the Supreme Court of the United States. The Supreme Court of the United States said contentions have been made here under 15a as to the duty of making rates that would respond to that test. We do not pass upon that or consider it in this case, the court said. What we do find is that the commission decided this question on a record that was closed in September, 1928. The western carriers came to the commission and made representations that conditions had changed since 1928, and therefore they were not deciding the case on any proper base of existing facts. The court said, this court will take judicial notice that the economic conditions in this country have changed since 1928, and that being the case, there has been no hearing such as is provided for by law on the conditions under which this decision should be made, and they reversed the case, simply on that ground of a lack of hearing, and did not undertake to enforce these provisions of section 15a.

Now, another case last spring—

Mr. BECK. That case you refer to is the Atchison case, is it not?

Mr. THOM. Yes. Last spring there was filed with the commission an application for an increase of 15 per cent, horizontal increase of 15 per cent in the rates. The reason for it was stated in the petition.

It was based on section 15a. There was a concession everywhere that the standards of 15a were not being realized; that the return which the commission had stated was a fair return was not being earned by one-half.

What did the commission do? They just said it is not practical to apply that standard. So, every time that application has been made, it has failed, and it has failed because—

Mr. PARKER. Mr. Chairman, I would like to ask him a question.

Mr. THOM (continuing). Has failed because, I think, gentlemen, the attempt to enforce it is in defiance of economic forces, which no law can evade and no power can upset.

Mr. PARKER. Are you arguing, Colonel, that there is no such constitutional provision, that the courts are not finding it practical.

Mr. THOM. I beg your pardon, as I did not understand what you said.

Mr. PARKER. Are you arguing that there is no such constitutional provision, or that the courts are not finding it practical to enforce it?

Mr. THOM. I am not. I hope I am not being understood as arguing that there is no constitutional protection for these carriers. I insist on it that there is constitutional protection. I insist on it. The constitutional protection consists in showing that an act of government deprives them of their property, and to determine what that is, the value of the property and the value of the uses of the property must be proven, must be presented and sustained.

What I am arguing for is this—

Mr. PARKER. Let me ask you, on any rate that is fixed, that is your last line of defense, and on any basis you can bring that up?

Mr. THOM. Yes.

Mr. PARKER. And still exists, and is your defense.

Mr. THOM. Yes.

Mr. PARKER. And that is a right that you are entitled to.

Mr. THOM. But, we are getting now to the question of what shall be the policy of government in regulating these railroads. Shall it be to attain the end of having revenues enough to give the people an adequate transportation system, facilities that they need?

Now, that is the question, and that is a very different question from the question of confiscation. Confiscation is an exceedingly difficult thing for a railroad to insist on. There are many reasons for that. One reason is that a constitutional right is a right of an individual carrier. If it contends that its rates are too low, and that its property is being taken from it, and that claim is sustained, then the remedy is to put up its rates, and at once those rates come in competition with some carrier that is perhaps earning above the line of confiscation, the rates of the complaining carrier would be higher and the rates of the uncomplaining carrier would attract all of the business, so it is an exceedingly difficult thing, but it is a right which nobody can take away, and which I do not wish to see in the least impaired, but I wish to see a system of regulation that will not raise that question, and that will be as liberal as the Government ought to be in sustaining an agency on which it puts its hands and has limited in every possible direction in respect to what it may do and what it may earn.

Now, as such an agency as that, that you gentlemen have properly taken into your keeping, and have limited in these ways that

I have referred to, what is your policy? What ought your policy to be in respect to the administration of that immense power? In the first place, you will ask, is it essential to the public interest—and everybody admits it is—and if it is essential to the public interest, everybody, it seems to me, ought to admit that your system of administration ought to be sufficiently liberal to enable it to live and do the work that is essential to the public.

The next point I wish to call attention to is this matter of pooling.

It has been suggested that the purpose of pooling as contained in the Transportation Act, in the Interstate Commerce Act, has not been sufficiently availed of; that there ought to be more pooling of earnings between the successful roads and the unsuccessful roads.

I wish to call your attention to the fact that in the section providing for pooling there is this limitation, that pooling shall not be resorted to without the assent of each carrier involved, but I want to go still further and to discuss the question a little more fully than merely as to what is now expressed in the law. What is the limit of power on the part of Congress in respect to this? That question has arisen in two cases, in the New England division case and in the Goose Creek case, and in both of those cases, it was recognized by the Supreme Court that the limit of power in respect to taking the earnings of one carrier for the benefit of the other was that it should not unconstitutionally deprive the carrier from whom the earnings were taken of a fair return on its property.

Mr. NELSON. Mr. Chairman, if the witness, in referring to cases and decisions of the court, would give us the proper citation, it would help us a good deal.

Mr. THOM. What is that?

Mr. NELSON. You just mentioned some cases. If you would give us the volume and the page, that would help.

Mr. THOM. I do not happen to have those two cases, those two references, but I will supply them for the record.

There, in those cases, this principle is deducible that no constitutional power resides anywhere to require one carrier to help another until after the carrier called upon to help has received a fair return upon its property, or a fair return for its service.

Mr. HUDDLESTON. Colonel, do you distinguish between lending this excess to other carriers and paying it to them?

Mr. THOM. That is the only way we got the recent emergency increase over.

Mr. HUDDLESTON. I beg your pardon.

Mr. THOM. That is the only way we got it over, in view of that distinction, between lending and giving.

Mr. HUDDLESTON. You hold, that while in the Goose Creek case, it was held that the excess might be recaptured for the purpose of lending, that it can not be recaptured for the purpose of paying it over to another carrier?

Mr. THOM. No; I say, in the Goose Creek case it was shown, it was indicated, that nothing could be recaptured from a carrier until it had earned its constitutional return.

Mr. HUDDLESTON. But, the excess might be recaptured for the purpose of lending?

Mr. THOM. That is, in any year—

Mr. HUDDLESTON. What is that?

Mr. THOM. That is, in any year.

Mr. HUDDLESTON. You think, then, that it can not be recaptured for the purpose of making up a deficiency in the earnings of a weak carrier?

Mr. THOM. After you have gotten beyond the point of a fair return from the carrier from whom it is taken; yes, I do. That is what I think that the court said.

Mr. HUDDLESTON. Then, there is no distinction between a loan and a gift?

Mr. THOM. No; not in that respect; but I thought that you were talking about this recent railroad credit corporation; but there is no distinction in respect to the method in which you bring it up, bring up the matter now, between a loan and a gift.

Now, that does not mean—and of course, I ought to say this with bowed head and with the greatest deference—that does not mean that I at all agree with the decision of the Supreme Court in the Goose Creek case. It does not make any difference whether I do or not, but I have on my side the opinion of the present Chief Justice of the United States, and I have this also on my side, Mr. Bledsoe stated in response to questions of this committee, that no rate could be fixed under section 15a except one that was reasonable under section 1.

I agree with that proposition, and to my method of reasoning, when you have earnings from rates that are reasonable under section 1, I can not see why it is possible to take any part of that away. But, that is neither here nor there. I just wanted to get that out of my system, because I have had it in there for a long time and I wanted to just say that much. [Laughter.]

Mr. SHALLENBERGER. Mr. Bledsoe, I believe, did say in response to questions that railroad rates were higher under the commission's regulation than they would be without it. Do you agree to that too?

Mr. THOM. Well, there is danger of that. The competition between these railroads is very great. The pressure on them to produce immediate financial results is very heavy. They will resort to competition to get business away from a competitor, which is perhaps not justified by a larger view of the situation, and that competition might reduce rates, as Mr. Bledsoe testified.

Mr. SHALLENBERGER. Does that mean, then, Colonel, that the commission has been effective in protecting the roads from themselves, rather than protecting the public?

Mr. THOM. I think so—no, wait a minute, not rather than protecting the interests of the public. I did not hear that last. I think it has been effective in protecting both.

I am not a critic of regulation, except as it may be carried too far.

Mr. SHALLENBERGER. You are very sure of one side?

Mr. THOM. What?

Mr. SHALLENBERGER. You are sure that it has protected the railroads?

Mr. THOM. Not as sure as I am that it has protected the shippers. I think that it has done both; but your question is whether it has been greater protection to the railroads than it has to the shippers.

Mr. HUDDLESTON. I take it that it is your view that the system of regulation of railroads has been beneficial to the railroads.

Mr. THOM. To the country and to the railroads also.



Mr. HUDDLESTON. I am speaking of the railroads particularly.

Mr. THOM. I do not want to speak of them particularly. I want to speak of the country, and I include in that the railroads, in answer to your question, and answer your question in the affirmative.

Mr. HUDDLESTON. You referred to regulation as a "limitation." I want to ask you the straight question, whether that limitation has not been for the benefit of the railroads?

Mr. THOM. My judgment is that regulation has benefited the railroads of the country. I think that is very well illustrated by the fact that I understand that the water carriers are knocking at your door now, so that they may be regulated as well as the railroads.

Mr. HUDDLESTON. We hear men say that the railroads have been put in a strait-jacket.

Mr. THOM. That is a fact.

Mr. HUDDLESTON. But that strait-jacket is for their own benefit?

Mr. THOM. That strait-jacket has helped in many respects. In some respects it has probably been unnecessary. It is unnecessary here to go into the details of it. As a whole, the system of regulation has been beneficial to the railroads and beneficial to the country, in my judgment.

Now, I want to say, therefore, that inasmuch as no power resides anywhere to take from one railroad to help another until after the railroads from which the amount is taken has received a fair return on its value, or a fair return for its service, no system of pooling can be put into effect, constitutionally, in defiance of that principle. It must be safeguarded by that one thing.

I come now to the last subject that I want to discuss, and that is the subject of valuation.

In the bill, in the amendment to the bill now under consideration, which I shall present in a few moments to the committee, we ask that the valuation section of the act, 19a, shall be repealed.

Now, why do we do that? It is because the importance of valuation will have disappeared if recapture is repealed.

If you change section 15a in its rate making so as not to call upon valuation as an element in rate making, its importance has gone there. The valuation act was enacted in the first instance by those who suspected that the railroads were full of watered securities. The examinations which the commission has made since 1913 to this time have exploded that theory.

The office of valuation now, is simply to support a claim for recapture or to support a rule of rate making as it exists now on the statute. If you repeal recapture and you make a different rule of rate making not based upon valuation, the importance of valuation has disappeared.

Now, I want to show you something about the cost of carrying on this work.

Mr. HOCH. Do you intend to say anything more as to the necessity of valuation? If you do, I do not want to interrupt you, but if you are going to the question of costs, before you do so I would like to ask a question or two.

Mr. THOM. I would like to have you ask me any questions that you may have, now, Mr. Hoch.

Mr. HOCH. Do you think that the facts as to valuation are essential in determining what new securities should be issued?

Mr. THOM. What?

Mr. HOCH. In determining whether the different carriers shall be permitted to issue new securities, is it important to know something about valuation in connection with or in regard to that?

Mr. THOM. No; not in the sense of making valuation a part of the duties of the commission. Those values can be gotten at independently of that.

Mr. HOCH. How can the commission have in its possession such facts as to valuation, when they come to pass upon the question of the issuance of new securities, if it has not carried on this valuation?

Mr. THOM. Because that is a matter of judgment which it can be informed on in a particular case by obtaining information in respect to that carrier's property, and its value then, and without all of this costly machinery that I have spoken of.

Mr. HOCH. Would not that require a great deal of investigation in connection with applications to determine it?

Mr. THOM. I think not. Every man that lends any money to a railroad makes that estimate of the value, but does not do it through a system of valuing such as is here described. Every railroad forms a judgment as to whether its assets will bear a loan, and the Interstate Commerce Commission has the same power of investigation that the lender has and can arrive at it in that way and quickly at a basis of whether or not the loan is justified.

Mr. HOCH. As I understand, the position of the commission is, and it is indicated by section 3 of this bill, that the commission thinks that after it has arrived at its basic valuations, it shall then be permitted, under the new provision, to keep those valuations up to date. As I understand, the commission has complained repeatedly that the present law is lame in that it requires the commission to determine new values "in the same manner," if I recall the language of the statute.

Mr. THOM. That is right.

Mr. HOCH. As in the original valuation, and they propose what they think will be a simplified accounting procedure to keep track of depreciation and betterments and all of that, and they think that will be a comparatively simple thing, if we add a new provision to keep their valuations up to date.

Now, if we are to abandon that entirely, would not the commission be confronted in any case where the issuance of new securities was asked, with a much more difficult proposition of arriving at its own independent judgment as to what values were?

Mr. THOM. I do not think so.

Mr. HOCH. Than if we did have it in the law?

Mr. THOM. I do not think so. The provision which I am going to present to the committee will require the commission to keep itself advised, to keep all records that it now has, and keep itself advised as to any changes in the property, advised of that, and that is a sufficient basis to form a judgment on the subject of how much a carrier ought to be allowed to borrow.

Mr. HOCH. Do you agree with section 3 of this bill?

Mr. THOM. Is that paragraph f?

Mr. HOCH. That is paragraph f.

Mr. THOM. No, sir; I go further than that.

Mr. HUDDLESTON. Colonel, may I ask you whether you do not think that valuation would be useful in connection with a case involving rates claimed to be confiscatory?

Mr. THOM. I think that the commission is using a method of arriving at valuation which the carriers can not accept and that in any confiscation case they will have to proceed to get the court to make a judicial determination of that question.

Mr. HUDDLESTON. Are you advised how nearly complete valuation is under 19a?

Mr. THOM. I am not; I am not, but it is very far from complete.

Mr. CROSSER. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Crosser.

Mr. CROSSER. Colonel, if I may interrupt you for a moment, would you mind telling us in what way you think the methods adopted by the commission in determining valuations are wrong?

Mr. THOM. Because they have not been taking into consideration some of the elements of value required by the Supreme Court, as in the O'Fallon case. There is litigation over the second one of those cases, the Richmond, Fredericksburg & Potomac case, on the same ground, that they did not take the elements of value into consideration which they ought to have taken.

Now, if they proceed with it, it is still going to be a controversial matter. It is easy enough to proceed without it, and when you get rid of recapture and you get rid of valuation as a base of rates, and you are able to do what I have suggested in response to Mr. Hoch's question, the necessity for valuation is gone, and I want to tell you gentlemen that railroad executives are now visiting the commission for the purpose of seeing whether or not a vacation can be taken in respect to valuation, in these times of high expenses, so that they may get rid of that valuation expense.

And, some of the railroads have found it necessary now to ask for an extension of time to pay taxes. Many of them are not earning their operating expenses. More are not earning their interest charges.

Now, with valuation performing no longer, as I think, any useful purpose, what is the necessity for the expense to be carried on by the Government and by the railroads, such as I will now read into the record.

Mr. MAPES. Colonel Thom, may I ask you a question?

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. You say one of the purposes of the enactment of the valuation law, was to correct an assumption on the part of the public that there was a lot of watered stock in the set-up of the securities of the roads. In the course of time, if we repeal the valuation section entirely, would not the public get around to that thought again?

Mr. THOM. I do not think so, because there can be not a single security issued by the railroads, except under the permission and after investigation by the Interstate Commerce Commission.

Mr. MAPES. Does not that in itself require the commission to know what the value of the roads are?

Mr. THOM. Not with the accuracy required in valuation, but with the accuracy required, that you would require, if you represented somebody that was requested to put some money into the railroads.

Mr. MAPES. But, in the past, there has been distrust or criticism on the part of the public agencies and, might not the public be led to think that the commission had allowed the roads to water their securities?

Mr. THOM. Well, I do not have that opinion of the commission, Mr. Mapes. I do not believe that the public has lost confidence in the commission, and I believe anything the commission does in the way of permissive action on the part of the railroads will be regarded as certainly sufficiently restrictive.

Mr. MAPES. But Congress, if it considers the proposition of repealing all of 19a, the valuation provision, has got to take that into consideration, has it not?

Mr. THOM. I think that so far as Congress is concerned, that is a consideration it should take it into view, but my own judgment is that there can, hereafter, be no criticism about the issue of railroad securities, as long as you require that none can be issued without the consent of a governmental agency, which you now do.

I am not asking here for any modification of 20a. I am only asking for repeal of 19a, and 19a has to do with valuation.

Mr. MAPES. The commission itself is asking for repeal of that provision, which says that securities shall not be issued for more than the property is valued.

Mr. THOM. They are asking for that in connection with consolidation. That only has relation to consolidation.

Mr. NELSON. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Nelson.

Mr. NELSON. Colonel, I do not understand how valuation can be dismissed or how the commission can afford to ignore valuation, in view of the fact that there is a constitutional legal guaranty to the railroads that they are entitled to make a fair and just return on a proper valuation.

Now, you always have that in the background as a defense, have you not?

Mr. THOM. Yes, sir.

Mr. NELSON. Why, then, should we tell the commission to ignore it?

Mr. THOM. You have not told the commission to ignore it.

Mr. NELSON. Are we going to get away from that in safety?

Mr. THOM. But, when you want to use it for the purpose that it is now used, you want to use it, in my estimation, for an impossible use, because you want to make rates on value.

Mr. NELSON. You say that valuation can be dismissed. How can valuation be dismissed, as long as there is that constitutional provision which protects the railroads?

Mr. THOM. I do not want you to dismiss valuation, but I am asking you to dismiss your requirement that the commission make a valuation.

Mr. NELSON. Then, they have got to have in their minds, at all times, an intelligent comprehensive of valuation, or their rates are illegal, have they not?

Mr. THOM. I do not think so.

Mr. NELSON. They do not have to? Have they not got to consider value and have a reasonable understanding of the valuation of a road in order for the rates which they make to be legal?

Mr. THOM. I do not agree with that, and I have tried to show the reasons for it, Mr. Nelson.

Mr. NELSON. You are asking us to ignore valuation, and go ahead and make rates on some other basis, but in the last analysis, under the constitution, valuation must be considered. So why should we ignore it?

Mr. THOM. The constitution only says that you shall not make rates below a certain value.

Mr. NELSON. I know that, but valuation is one of the factors which enables them to judge whether the rates are constitutional.

Mr. THOM. If anybody thinks that the rates are made below valuation, they can go to the commission's records and find inventories of their property, and bring them in and present to the court the question of what the value is, whether, so far as it relates to making rates, it is too low from the constitutional standpoint.

Mr. NELSON. I do not understand how the commission, or Congress, can lose sight of this question of valuation.

Mr. THOM. I hope that the committee will not understand me as advocating that it shall be lost sight of.

Mr. NELSON. Yes; but if we will not take the owner's base, and this is the legal base, and the base that we take does not suit the railroads, or the rates that we make under the new base does not conform to the law, why then, where are we?

Mr. THOM. I am suggesting that you take a base of rate making that is practical, in the place of trying to place them on value, which is impractical, but valuation comes into play, the moment the Government deprives a carrier of a rate which it could exercise irrespective of that power of earning a fair return on its value, and it is then up to the carrier to show what its valuation is.

Mr. PARKER. It seems to me, Colonel, that there are some old landmarks that we ought not to get very far away from.

Mr. THOM. Well, you gentlemen have got to consider whether it is worth this.

The CHAIRMAN. No, we must close now.

Mr. THOM, a member of the committee has asked if your office force can make copies of the amendments which you offer.

Mr. THOM. What?

The CHAIRMAN. If the amendments that you have suggested can be put in the hands of the members of the committee.

Mr. THOM. I am going to bring them here and put them in.

The CHAIRMAN. Will you have copies for individual members of the committee?

Mr. THOM. I have got them for the individual members of the committee.

The CHAIRMAN. Mr. Bulwinkle suggested that.

Mr. THOM. We have copies.

The CHAIRMAN. To-morrow we will go on with the short-line railroads, and we hope to get through with the short-line railroads, and Mr. Thom, the remainder of his statement, this week, and the first thing Tuesday we will try to hear the electric lines, Tuesday.

and another gentleman or two that want to be heard, and on Thursday and Friday we hope to wind up these hearings with Mr. Eastman.

Mr. MALONEY. I have a letter here, Mr. Chairman, which was sent to me by the vice president of the Louisiana & Arkansas Railway Co., giving his views in reference to the legislation that is being considered by this committee.

The Louisiana & Arkansas Railway operates in Texas, Louisiana, and Arkansas, and I think it is not a short-line railroad. If it is in order, I would like to submit this letter for the record.

The CHAIRMAN. It will go in the record at this point.

(The letter above referred to is as follows:)

LOUISIANA & ARKANSAS RAILWAY CO.,  
Shreveport, La., January 23, 1932.

HON. PAUL MALONEY,  
House of Representatives, Washington, D. C.

DEAR MR. MALONEY: I understand that a number of amendments to the interstate commerce act have been proposed and are pending in the House and Senate, and that hearings are either now, or will shortly be in progress thereon.

There are a number of respects in which I think the present act should be amended, but I am especially concerned about the recapture provisions, which as you know, are contained in section 15a of the act, 1920. I think there has been more misunderstanding on the part of the public about the provisions of this section than almost any other legislation with which I am familiar. When the act was first passed the impression that this section guaranteed the railroads a certain return on their investment became more or less general, and a great many people still think that is true, notwithstanding the contrary is the fact. Even so prominent a citizen as the Hon. L. E. Thomas, who is a lawyer, in campaigning for the Senate against Senator Ransdell some years ago stated publicly in his campaign speeches that Congress had guaranteed the railroads a return on their investment. This shows you how widespread the misapprehension was. This section, in (6) thereof, as you of course know, limits the return which a carrier may earn and retain for itself in any one year to 6 per cent on the valuation of its property, such valuation to be determined by the Interstate Commerce Commission, the carriers being required to pay to the Government one-half of any yearly earnings in excess of 6 per cent on the value of their property, and to place the other in a general contingent fund to be used only for certain designated purposes.

Pursuant to the provisions of (4) of this section, 15a, of the act, the commission fixed a tentative valuation for the carriers as a whole and then began gathering data and making exhaustive investigations under which to determine the values of the individual roads. The commission and the carriers have spent much time and vast sums of money in an effort to determine those values, and so far the most that has come out of those efforts has been controversy and court proceedings. The almost insurmountable difficulties in the way of physical valuation of the railroads are set forth in report of the commission dated July 21, 1931, addressed to Hon. James Couzens, chairman Committee on Interstate Commerce, United States Senate, reproduced as Appendix G to the commission's 1931 annual report, which you may desire to read.

Even if the highly controversial subject of valuation were settled, the recapture requirement would, in my judgment, still be unfair to the carriers in that each year must stand upon its own bottom. As the law now stands, if a carrier in any one year earns in excess of 6 per cent, it must pay half of its earnings above that figure to the Government, notwithstanding that next year and perhaps for several years it may not earn anything like 5½ per cent; in fact, may experience deficits, as a good many of the carriers are now doing and probably will do for several years. Manifestly, a 1-year period is entirely too short.

So, if this recapture provision is to be continued at all, it ought at least to be based upon a period of years—say five years for each period—but even then, so long as the carriers must take their chances on earning a fair return in lean years, it does not seem that they should be required to pay to the



Government any portion of their earnings during good years. Their rates and practices are so regulated by law and the commission that they can not gouge the public by charging excessively high rates and in that way pile up unduly large earnings. Therefore, it would seem to me sound business policy to permit the carriers to retain what they earn in good years so that they would be able to weather the storm in bad years. It is my feeling after giving the matter much study, that the recapture provision of the act should be repealed and that the repeal should be retroactive; in other words, the railroads should not, especially faced as they are with such serious conditions, imperiling the ability of many important roads to continue to function and stay out of the hands of receivers, be required to pay over to the Government any excess earnings which may have accrued to them since the passage of this section of the act in 1920.

Notwithstanding (2) of this section, 15a, of the act provides that:

"In the exercise of its power to prescribe just and reasonable rates, the commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation."

and the commission, pursuant to the authority elsewhere contained in this section of the act, having fixed 5% per cent as a fair return, and the carriers as a whole have not in any 1 of the 10 years since this section of the act has been in effect earned the 5% per cent fixed by the commission as a fair return, the commission has not undertaken to so readjust the rates in accordance with the mandate of the law just quoted as to enable the carriers to earn that return. During those years the returns of the Class I railroads have been:

	Per cent		Per cent
1920-----	0.08	1926-----	4.99
1921-----	2.87	1927-----	4.30
1922-----	3.59	1928-----	4.65
1923-----	4.33	1929-----	4.84
1924-----	4.23	1930-----	3.30
1925-----	4.74	1931 (11 months ended Nov. 30) -	2.02

From this you will see that the earnings of the carriers have not been excessive during this period, nor is it possible for them to become so because their rates and charges are controlled and fixed by the Interstate Commerce Commission. The present outlook is that 1932 will show a decrease under 1931, for practically every railroad in the United States is still experiencing decreases in its tonnage and earnings from month to month. For instance, during the month of November, the last figures now available, the rate of return of the Class I carriers was only 1.68 per cent. Just what the end will be it is impossible for anyone to foresee, and I hesitate to attempt to predict the final outcome. Undoubtedly, the railroads are faced with the most serious situation with which they have ever been confronted.

It is my understanding that the Interstate Commerce Commission has recommended to Congress the repeal of the recapture clause, and I believe of the entire section 15a. In order to refresh my memory, I have just referred to the commission's last annual report for the year 1931, and I find that my impression that the commission recommended in 1930 the repeal of the recapture provisions of the act to be correct, and that in their 1931 report they again make that recommendation and propose a substitute for the entire section 15a. I suggest you read the recommendation of the commission with respect to this section of the act, to be found on page 107-110 of their 1931 annual report.

As indicated by the commission in its recommendation dealing with section 15A, the carriers, or at least some of them, for a time felt that the so-called rate making laid down in section 15A should be continued, but since this rule has been a dead letter, inasmuch as the commission has never attempted to revise the rates so that the carriers as a whole might earn the 5% per cent on their fair valuation fixed by the commission as a reasonable return, it is my opinion that the whole section might as well be eliminated from the act. The interstate commerce act as in effect at the time of the passage of the act,

1920, contains in sections 1 to 3 ample provision for the fixing of reasonable rates, fares, and charges.

I do not know how closely you have followed the railroad situation; naturally not as closely as I have, because my duties necessitate my being informed not only as to the operation and results of the road with which I am connected, but also the volume of traffic and the earnings of other roads. Since this severe period of depression set in the latter part of 1929, I have had occasion to analyze closely the traffic conditions, operating expenses, and the net earnings of practically every important railroad in the United States and I speak advisedly when I say that the railroad situation at the present time is critical.

You, of course, know that the railroads are no longer controlled by the bankers and wealthy families. The New York Central for many years was referred to as the "Vanderbilt line"; the Great Northern and Northern Pacific as the "Hill line"; the Southern Railway system as the "Morgan line"; but at present the Vanderbilt family owns a very small minority interest in the New York Central; the Hill family owns a very small minority interest in the Great Northern and Northern Pacific; and the Morgan family owns perhaps an even smaller interest in the Southern Railway. These and all the other roads are now owned by the public; all the larger lines have thousands and thousands of stock holders as well as thousands of bond holders. Large amounts of railroad bonds are included in the portfolios of all the large insurance companies. Therefore, at this time and for several years past, the welfare of the general public is and has been indissolubly bound up with the welfare of the carriers; not only as to their ability to adequately serve the public, but also from the standpoint of their earnings. Of this you are no doubt aware, but I do not feel that I can impress this fact upon you too strongly, so I hope when the matter comes up for final consideration in the House you will see your way clear to advocate and vote for such measures as will afford the carriers relief from some of the burdensome provisions of the present act, notably the recapture clause.

Another matter affecting the welfare of the carriers, which will no doubt be considered by Congress at an early date, is the regulation of trucks and busses, which now compete so actively with the railroads. It is impossible for the railroads, regulated as they are, to meet that competition, unregulated as it is. Either the act should be amended so as to enable the carriers to meet unhampered the unregulated competition of trucks and busses, or the rates, fares, charges, and operations of trucks and busses should be regulated to the same extent as the rates, fares, charges, and operations of the rail carriers. The Interstate Commerce Commission has recently completed a very exhaustive investigation in the matter of truck and bus competition, and as I understand it, either have or will recommend to Congress the regulation of trucks and busses engaged in interstate common-carrier service.

The same situation prevails as to unregulated water carriers. At present the only rates of the water carriers which are subject to regulation by the Interstate Commerce Commission are joint rates between such water carriers and the rail lines. The port-to-port rates of the water carriers are not subject to regulation; for instance, the joint rates from St. Louis to Shreveport of the Mississippi Warrior Barge Line and the rail lines are subject to regulation by the Interstate Commerce Commission, but the all-water rates of the Mississippi Warrior Barge Line from St. Louis to Memphis, Vicksburg, Baton Rouge, New Orleans, etc., are not subject to regulation. I use the Mississippi Warrior Barge Line merely as an illustration because that line has more joint rates with the rail lines than any other inland water carrier; the illustration is equally applicable to all water carriers operating on inland waterways in the United States; and the situation with respect to ocean-going water carriers engaged solely in coastwise traffic is the same. To illustrate, the rates of coastwise steamers plying between New York and New Orleans, Galveston, and other seaboard ports are not subject to the jurisdiction of the Interstate Commerce Commission. Such water carriers are free to make whatever rates they see fit without publication or regulation, while the rates of the railroads must be published and can only be changed pursuant to law upon 30 days' notice to the Interstate Commerce Commission. The only exception to this is that where the coastwise water carrier participates in through joint rates with the rail lines to and from interior points, their port-to-port rates then become subject to the jurisdiction of the Interstate Commerce Commission and must be published the same as railroad rates. The Morgan Line and the Mallory

Line, for illustration, participate in joint rates with the rail lines to and from interior points, therefore their port-to-port rates, such as rates from New York to New Orleans and Galveston, can not be changed at will, while the rates of their competitors which do not participate in joint rates with rail lines can. It seems to me it would be in the public interest to give the Interstate Commerce Commission jurisdiction over coastwise water rates.

Another transportation abuse which has grown up in the last few years is freight-forwarding companies. Those companies make a business of gathering up less-than-carload freight in large centers for movement to large consuming points; they consolidate the less-than-carload shipments and tender them to the railroads consigned to themselves as carloads. The railroad rates are lower on carload traffic than on less-than-carload traffic. Upon arrival at destination the forwarding companies are supposed to collect the less-than-carload rates of the railroads from the several consignees and the difference between those less-than-carload rates and the carload rates they pay the railroads is their profit. The forwarding companies, however, are not regulated by law and can not be compelled to charge the full less-than-carload rates on the shipments they deliver; therefore, in practice these forwarding companies often make concessions to the larger shippers and receivers of less-than-carload freight and the amount of those concessions may vary as between one shipper and another, according to the whims, or the interest as they see it, of the forwarding companies. The Interstate Commerce Commission deals with this situation in its 1931 annual report on pages 86 and 87 and definitely recommends that the rates, rules, regulations, and practices of the forwarding companies be brought under their jurisdiction. This recommendation seems to me to be sound, not only in the interest of the protection of the revenues of the carriers, but also for the protection of the shippers and receivers of freight, because it is self-evident that so long as the forwarding companies can make one rate for one firm and another rate for another firm, unjust discriminations will result, which are burdensome to the smaller shippers.

I hope I have not made this letter too long; from my acquaintance with you I know you want to see the railroads dealt with fairly and equitably, and I have merely tried to point out to you some of the things which I think from my long experience in railroad work, ought to be done, and I have suggested nothing which I do not sincerely believe would be in the public interest.

Thanking you for the consideration I feel sure you will give this matter and with assurances of high esteem, I am

Yours sincerely,

B. S. ATKINSON.

The CHAIRMAN. The committee will now stand adjourned until to-morrow morning at 10 o'clock..

(Thereupon, at 11.48 o'clock a. m., the committee adjourned until the following morning, Thursday, February 4, 1932, at 10 o'clock a. m.)

## RAILROAD LEGISLATION

THURSDAY, FEBRUARY 4, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D. C.

(The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

This morning, we will first hear Judge Kerr, from North Carolina, a Representative in Congress.

### STATEMENT OF HON. JOHN HOSEA KERR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. KERR. Mr. Chairman and gentlemen of the committee: I appear before you this morning in the interest of repeal of the subsection of section 15a of the transportation act of 1920, and I desire to address my remarks especially in respect to the interests of the short-line railroads of the country, and especially in respect to one which is owned by the town in which I live.

In respect to this, gentlemen, I think the facts will be interesting to you and will aid you in coming to a correct conclusion about the legislation. It is not amiss, gentlemen, to say that this little railroad which I shall speak of is one of the prosperous railroads of the country, when you take into consideration the cost, its value, and its returns to the stockholders and to those who own it.

Warrenton, N. C., was built off of the railroad, or the first railroad that was built in the State of North Carolina did not run by the town, nor through the town. The people who lived there objected to that kind of innovation when this road was built in 1830; the first long road that was built in the State of North Carolina, the Raleigh & Gaston, ran 3 miles away from this little village.

After the war, in the seventies—

Mr. BULWINKLE. Pardon me, you mean 1870?

Mr. KERR. I meant after the war, in 1876, the business men began to see that it was necessary in order to keep abreast of the business of the world to make connections with this transportation line, this great line, that ran near by.

So the town, not having more than a thousand people in it, undertook to build this road out to the Raleigh & Gaston, which afterwards became one of the main sections of the Seaboard Air Line Railway Co. Only a few of the outstanding citizens were able to contribute much to the construction of the road.

They secured the right of way, but could not get money enough to grade it. So, about 1884, after the right of way had been secured

and part of it graded, and all of the money had given out, the town itself issued \$11,000 bonds which they succeeded in selling at about \$9,900, and with this sum, together with another sum of about \$3,000, subscribed by individuals, they built the line from Warrenton, N. C., to a depot on the Seaboard Air Line System.

From 1884 up until 1909, this railroad was hardly able to get along. For more than 20 years of its life, it ran behind for many years, it was just barely able to do the service, and meet the costs of operation. About 1908 or 1909 there came a demand for the lumber of eastern North Carolina.

I live in that section of the South Atlantic where the pine tree reproduces itself. It is the only section in the world that it does it. You can cut down the pine in the New England States and they never grow back again. You take off the pines in the Far West, or the tree that is akin to the pine, and they never reproduce themselves, but in the South Atlantic, from Maryland down to Florida, or Maryland even down around to Texas, you can leave any piece of land open for three years and it will reseed itself and the pine grow back rapidly.

This old county, Warren, in which this little town of Warrenton is situate was largely owned by a few slave-owners. Almost all of the original growth was cut off before the war, and after the war there were so many more negroes there than there were white people that a great many of them left, and this land being uncultivated grew up again in pine trees.

And, in 1909, these pine forests had come to be merchantable timber. This little railroad then began to move out this timber that was hauled by trucks and wagons—wagons at first—to the depot in Warrenton, and it then began to make money and pay dividends.

In 1909, after it had been operated for more than 20 years, and after the town had paid for it, what I want to impress upon you is, that this railroad was built by the town for the town, used principally by the town—that is, that was the purpose for which it was built. And, it was paid for by the people in the town. Every man who owned property in the town was assessed to pay off these bonds that built this railroad, and long after the bonds were paid off by the taxpayers, or several years afterwards, it began to make money, and began to pay dividends, and from 1909 to 1931, December 31, 1931, this railroad paid back, into the treasury of this town, an income sufficient to enable the taxpayers' taxes to be comparatively low; this income enabled us to own all of our public utilities, our lights, and our water; the only hotel except one other in this country municipally owned, which is a valuable piece of property, worth more than a hundred thousand dollars.

It had paid back to the stock holders of the railroad—mind you, gentlemen, \$3,000 of this stock was owned by private individuals, men who thought that they were making a contribution to the town when they took it—the road paid back to the town and the stockholders, \$164,472, from July, 1909, until December 31, 1931. Of this amount, the town received \$124,000 and the stockholders \$41,000.

There was taken from this income, from this railroad, by the transportation act, and there is here in the Treasury now, the sum of \$32,222.21, and they have contested assessments against it now which total about \$8,000 or \$9,000.

Of course, you gentlemen are as familiar—more familiar—than I am, with the fact that this recapture money has not been placed for any service, to any service, for the Government, and here it is in the Treasury of the United States.

Now gentlemen, I contend in behalf of this municipality, the town of Warrenton, N. C., that this small railroad was built by the taxpayers of this town, who assessed their property in order to make it possible, that it has never been in competition with any other public carrier, that it was not built or conceived for personal gain or exploitation, that all its income should inure to the benefits and comforts and conveniences of the public which built it, and that it is neither legally right nor has it moral sanction to impound \$32,000 of its income and hold it in the Treasury of the United States for any purpose whatsoever, certainly in view of the fact that the act which authorized its capture has been aborted and that no great railroad operated by a private corporation has ever surrendered 1 cent of its income under recapture clause of the transportation act.

Now, that is the history of this matter so far. It is apparent that this road can not compete much longer with the truck carriers of our country. The timber has been removed, and the vast forests in this fertile county have all been cut and carried away. We can not hope, and do not hope, gentlemen, that this road will be profitable many more years, because this timber has been carried away, and it will be 50 years before it will ever reproduce itself so that it will be merchantable timber, and we are left there with our property and all of it to be run by the taxpayers again, if it is kept up and operated.

What I see about it, gentlemen, is that it will not be kept up, and that will be abandoned.

We are coming here insisting that the law should be repealed; that this town, these taxpayers, should get their money back that they have paid in, in order that it may contribute to the welfare of the public, because that is what the railroad was constructed for.

I desire to say that there doubtless are many other short-line railroads, that can almost make out as good a case as I can for their railroads. We can not hope, as I said a while ago, to operate profitably much longer, because our timber is gone and because of the competition of the truck carriers.

You gentlemen must realize gross injustice of compelling these short-line railroads to pay their recapture funds, because their value is easy of ascertainment, whereas the great railway systems of the country avoid the law because of the almost impossibility of rightly determining what their true value is.

It is no trouble at all to get at the recapture assessment of the Warrenton Railroad, because you can take a pencil and go there and in 15 or 20 minutes tell what the rolling stock is worth, what the track is worth, and what the property values are, and what 6 per cent on it is, and take one-half of the income over and above 6 per cent.

I will be glad to answer any questions that you gentlemen would like to ask me.

The CHAIRMAN. Are there any questions?

Mr. MAPES. Judge, I have one question.

What is this railroad?



Mr. KERR. The Warrenton Railroad.

Mr. MAPES. How is it organized?

Mr. KERR. Organized by the town; the town borrowed the money and built it.

Mr. MAPES. Is it a corporation?

Mr. KERR. It is a corporation; yes, sir.

Mr. MAPES. Who owns the stock?

Mr. KERR. The stock is owned now—\$50,000 worth of stock is owned by the town, and \$16,000 owned by these men who put \$3,000 in it 40 years ago, and when they put their money into it they thought that they were simply making a contribution to the town, and—

Mr. MAPES (interposing). Who owns the balance?

Mr. KERR. The town owns \$50,000, and a few stockholders, members of the families of the men who put \$3,000 in originally, own the other.

Mr. MAPES. I understood you that the town owed 50 per cent of it.

Mr. KERR. No, sir; \$50,000 of the stock now. The stock is supposed to be worth—and there is in existence about \$66,000 worth of stock.

Mr. MAPES. The officers of the town are the officers of the corporation?

Mr. KERR. Some of the officers of the town are the officers of the corporation. I am glad that you called my attention to that. This road is operated under the direction of one man, and has been largely operated by him for 40 years; twenty-odd years he was secretary and treasurer, and has been president practically the balance of that time, a distinguished citizen, James Monroe Gardner.

Mr. MAPES. He is the actual manager?

Mr. KERR. He has been the actual manager for nearly 50 years, ever since it was first completed.

Mr. MAPES. We have had here more or less testimony about the effect of the valuation provisions of the transportation act, and when the valuations for recapture purposes were placed upon the roads by the Interstate Commerce Commission.

In your experience, when did the Interstate Commerce Commission determine that your road was subject to the recapture clause?

Mr. KERR. As soon as they promulgated the order the commission did that about 1922 or 1923.

Mr. MAPES. Did your road know in 1923, for example, that it was subject to recapture and what its contribution to the recapture fund would be?

Mr. KERR. I think it did. As I said, it would be no trouble in the world to determine that. Anybody could ascertain that. Anybody could go there and tell what the recapture was, what sum was due to the Government, or what the Government was entitled to under the act with a little railroad like this. They can do it in 15 or 20 minutes, you know.

Mr. MAPES. But do you know definitely when the Interstate Commerce Commission did determine it?

Mr. KERR. Yes; I think in 1923; 1922 or 1923, after it promulgated the first rule and order, first ordered that, they went down and assessed this road, said how much we owed, and that we paid. We continued to pay that until we had paid in, paid them \$32,000, and

there has been some controversy about it during the last year or two—about the assessment.

Mr. BULWINKLE. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Bulwinkle.

Mr. BULWINKLE. Judge, if you remember, when did you first make the first payment?

Mr. KERR. Why, I remember these things pretty well. I remember when we made the first payment.

Mr. BULWINKLE. When did the Interstate Commerce Commission attempt to collect it?

Mr. KERR. Immediately.

Mr. BULWINKLE. I mean, for the first and each year, and paid it each year?

Mr. KERR. We have made the payment every year, sir. Now, there is a controversy, but there was not any controversy at all until within the last two or three years, when the railroad raised a little controversy as to what is the value, and I think that it has been held up, and they are claiming something like nine or ten thousand dollars right now.

Mr. BULWINKLE. You are in favor of the retroactive repeal of the recapture provision?

Mr. KERR. I certainly am.

Mr. BURNESS. May I ask a question, Mr. Chairman.

The CHAIRMAN. Mr. Burness.

Mr. BURNESS. For the period of 11 years, have you earned more than 6 per cent for that whole period?

Mr. KERR. Since the act; we never earned any dividends until 1909.

Mr. BURNESS. I do not care about that at all, but since the enactment of the transportation act, for the period of about 11 years, have you, if you take that entire period as a whole, has your road earned more than 6 per cent each year?

Mr. KERR. Yes, sir.

Mr. BURNESS. You have earned more than 6 per cent?

Mr. KERR. Earned enough to have paid in \$32,000.

Mr. BURNESS. You have paid in \$32,000.

Mr. KERR. \$32,000.

Mr. BURNESS. So, you have had a recapture claim each and every year during that period?

Mr. KERR. Yes, sir; and we have paid it every year, I understand, from the beginning. Gentlemen, I was discussing it with them recently. They unhesitatingly gave a check for it every time, until the last year or two there was some controversy about the assessment.

The CHAIRMAN. If there are no further questions, we are very much obliged to you, Judge.

Mr. GILLEN. I take it, sir, that you are not holding your road up as an example of Government ownership?

Mr. KERR. No sir; I did not come here primarily to do that. As a matter of fact, though, this is a fine example of Government ownership.

The CHAIRMAN. That is the only ray of hope that we have had from the properties of railroads for a good while, and we are doubly obliged to you.

Mr. BURTNESS. If it had not been for his prophecy, it would have been an excellent example.

The CHAIRMAN. We will now hear from Mr. Green.

Mr. Green, you have 15 minutes.

**STATEMENT OF HENRY I. GREEN, URBANA, ILL., VICE PRESIDENT AND GENERAL SOLICITOR OF THE ILLINOIS TERMINAL CO.**

The CHAIRMAN. If you will qualify, Mr. Green, by giving the reporter your name and address, and whom you represent.

Mr. GREEN. My name is Henry I. Green, Urbana, Ill. I happen to be vice president and general solicitor of the Illinois Terminal Co., which operates what is known as the Illinois Terminal Railroad System. That consists of approximately 500 miles of electrically operated railroads in Illinois and between 75 and 100 miles of steam-operated railroad in Illinois.

We are especially interested in this, in these bills, because of the fact that we have just been served with notice from the Interstate Commerce Commission, under section 15a of the transportation act, that we owe some \$78,000 for the years 1926 and 1927, by way of recapturable income on one of the properties that goes into this Illinois Terminal Railroad System.

The electric lines in question are those that used to be known, and are yet, I guess, as the McKinley Lines, in Illinois.

One of the steam lines is known, or was generally known, as the old Chicago, Peoria & St. Louis, which was a broken down railroad and in receivership, and had a receivership history for a good while.

We now own one end of that railroad, from above Alton, a little ways, to St. Louis, which is leased to the Illinois Terminal Co. We have deposited with the Interstate Commerce Commission \$800,000 cash, and \$800,000 in securities, which they have approved to protect against alleged amounts due for recapture against the Illinois Terminal Co. for certain years, from 1920 to 1928. We are, of course, very much concerned about the retroactive effect and provisions of any repeal of the recapture act.

And to us it would be so eminently unfair, therefore, if it were not made retroactive, that it is to proceed to present to you these facts, that I excuse my appearance here.

We are permitted to—call it merge, or to lease these properties—and one of the provisions which the Interstate Commerce Commission made when we entered into this contract by which we saved for Illinois this electric railway system, was that we had to enter into that agreement. We had behind that movement the importunities of a hundred communities, and the farming population, which had grown to depend on this electric interurban railway, in many cases, as its sole course of railway transportation, and in other cases, as a very important factor in transportation through central Illinois.

And, the Interstate Commerce Commission, in permitting these electric lines to be leased to the Illinois Terminal Co., made it a condition precedent that we should deposit with the commission \$1,600,000 to protect the Government in its claim for recapture, and that has been deposited.

Had it not been for that merger and the policy adopted by the Interstate Commerce Commission, the McKinley interurban roads would be largely a matter of history.

As I say, in that movement, the farmers and the communities from one side of Illinois to the other joined in a solid phalanx in urging the commission to permit this lease and authorizing this lease in order that this property might be saved.

Now then, into this picture, there has been consolidated, by lease, the property of the Alton & Eastern, which, as I say, was the strong end of the old Chicago, Peoria & St. Louis.

We are now told, for the two years, that this recapture amounts to, and that that road owes, \$78,000. It probably would not owe anything this year or last year.

This is of special importance to us at this time, because as a result of, and pursuant to, the policy which we laid out when we consolidated these properties for operation, we started building what we think is the most outstanding terminal development west of Cleveland, if not anywhere west of this part of the country, in the city of St. Louis. We have already spent between \$12,000,000 and \$13,000,000 in building a terminal in the city of St. Louis, for these properties, steam and electric, and have a few more millions to spend, and have really furnished the one outstanding source of labor employment in the city of St. Louis during these trying times.

We are going over and under the streets with our electric lines. We are electrically operating over our own bridge into the city of St. Louis a couple of miles of elevated structure and nearly a mile of subway railroad, double tracked, the significance of which may be illustrated by the fact that two of the great newspapers of that metropolis are building new homes, one of them already finished, and operated on this property, exclusively served by this road; the St. Louis Globe Democrat building is finished and occupied, and the St. Louis Star building is in process of erection; they will have this railroad alone for their service.

In that connection we have tried to do what a railroad ought to do, in keeping pace with, and even ahead of the development of the territory through which it moves and in which it operates; and I know that I bespeak the sentiment of that city and all of its agencies when I say that they feel that we have kept faith and we are doing the constructive thing; but now we have \$1,600,000 tied up with the commission, to be polite, which would come in terribly handy right now in these days when ability to finance these developments and finish the job is becoming a herculean task; and on top of that, confronted with a claim for nearly a hundred thousand dollars, because one of the carriers that went into the picture had two years of prosperous history. In addition to that, we are enjoying the common experience that all of the railroads are having, that with the motor bus and the motor truck, there is a competitor in the railroad industry that threatens our very existence. Peculiarly does that apply to this electrically operated portion of this railroad. The result is that although it was primarily developed as a passenger line, yet with the competition of the automobile it has been converted practically to a freight-carrying road, so that 85 to 90 per cent of the business of our railroad is now freight business, although electrically operated.

We feel as if we are pioneers in the development of the railroad industry, and we have done our part to meet the condition of the times, but to-day we are suffering the same common experience that the railroad industry is suffering everywhere.

We probably will not be bothered with recapture a year like this, or last year, but we do have this \$1,600,000, which is mighty necessary in the development plans, and I know that I voice the sentiment of the business organizations of the Mississippi Valley through which, or in which, we are operating, in Illinois, in St. Louis, as well as that of the civic leaders and organizations of those communities that the recapture act has not worked with reference to properties generally, and as to this property it has a crucifying effect; and that, indeed, the ability to carry on is largely measured by what we may be able to get from the profound and sensible working out of these proposed amendments, or repeal of the recapture provisions.

And now I want to add this.

We have been fighting this question of recapture all of these years before the Interstate Commerce Commission. The fairness with which that body has gone into the subject can not have too much commendation. We have differed in our ideas of valuations. We have expended vast sums of money in this litigation. We have already put up this \$1,600,000 as the price which the commission, in its judgment, and, it thinks, properly so, required us to pay by way of a guaranty for permitting this property to be brought together; as a price of allowing these properties to be put together, and thus saving these railroads for Illinois and for the Mississippi Valley.

Now, the thousands of dollars that we had expended in that litigation has been a terrible drain on the resources of this relatively small carrier, and yet we have only begun to spend money, because at this time the matter is still undecided by the commission as to the amount of recapture, so that the opportunity for an appeal to the courts has not yet arrived; and you can well see that, not yet having gotten the matter into the courts, notwithstanding the heavy expenses of hearings and the controversies before the commission, this matter is as yet at the threshold of its expenditure requirements; and in these days, when we are retrenching, from the executives to the section hands, in every way we can to save every dollar we can, you can well understand the importance which the hope of repeal of this terrible expense and troublesome feature of the transportation act will mean to these properties.

Mr. PARKER. May I ask a question, Mr. Chairman?

The CHAIRMAN. Mr. Parker.

Mr. PARKER. Mr. Green, what was the condition under your old system and after you combined?

Mr. GREEN. After?

Mr. PARKER. Yes.

Mr. GREEN. May I state it this way: In 1927 we failed by around \$600,000 on the McKinley lines, and I include in that the properties in St. Louis, by \$635,000, to earn our fixed charges.

In 1928, after we had unified operation, by unification of these lines we went into the black in the neighborhood of \$500,000. Those figures are approximate, but that will give you an idea.

Mr. PARKER. What per cent does that represent on your capital?

Mr. GREEN. Well, we had in the neighborhood of \$40,000,000 in electric lines, and we paid nine and one-half million dollars for the steam road—in the neighborhood of \$60,000,000. That is, the \$500,000 in the black was less than 6 per cent on the combined total, but the steam line, which we acquired for the nine and one-half million dollars, was a very profitable line. That had been made a profitable line because it was built in a country where business interests had seen opportunity of development and opportunity of developing great industrial centers, and they had the line there and it was not the outgrowth of plant facilities. It was an independent railroad, and we have enjoyed a rather unique position among railroad people.

The commission has viewed it that way. It was not any accident, the development of this property, the steam railroad property. We feel that we have been doing constructive work. I know, in 15 minutes, of course, I can not give you the details of the picture, but we have got this emergency, this terminal emergency. We are expending this \$15,000,000 in St. Louis, building our terminal, which is not yet completed.

You know the conditions in the money market. If we had this \$1,600,000 we have lodged with the commission to protect this recapture, we would probably ride to the finish without troubling the money market, and, I think, have the glorious commendation of the Mississippi Valley communities. Without that, we are crippled and handicapped, and indeed, from month to month the problem presents itself as to whether or not these hundreds of men we have had at work all these months can be kept at the job. We are going to try to finish it anyway, but I believe that it will appeal to any reasonable man that this recapture provision works an unjust hardship; that is, the collection of it, on the carriers and railroad systems which are undertaking to do their part to keep the wheels of commerce and industry moving in these troublesome times.

The CHAIRMAN. Any further questions?

Mr. BURTNES. I would like to ask a question or two.

The CHAIRMAN. Mr. Burtness.

Mr. BURTNES. You are the attorney for the company?

Mr. GREEN. Yes, sir; I am general solicitor.

Mr. BURTNES. Assuming that the amount you have lodged with the commission is finally held to be right, in so far as it represents the excess.

Mr. GREEN. One-half of the excess over 6 per cent.

Mr. BURTNES. And, assuming that the commission's valuation is correct. Then, I want to ask you, whose money is that?

Mr. GREEN. You understand—

Mr. BURTNES. Whose property is it, in your opinion?

Mr. GREEN. Why, this money was not lodged as the result of earnings on this merged property.

Mr. BURTNES. I understand that.

Mr. GREEN. It was earned by the steam line.

Mr. BURTNES. I understand that.

Mr. GREEN. It ought to belong to this railroad system for it to use.

Mr. BURTNES. I am not asking that question at all; I am just asking your opinion as to the legal proposition, as to who is the owner of this money, assuming that the findings of the commission were correct in so far as the amount is concerned.



Mr. GREEN. And, assuming that the recapture stays in effect?

Mr. BURTNESS. Well, the recapture is in effect.

Mr. GREEN. Of course, it will belong to the Government.

Mr. BURTNESS. Belongs to the Government?

Mr. GREEN. That is, if the recapture stays in effect, it will belong to the Government.

Now, it is dedicated to certain specific uses, but the carrier will not have anything to say about that.

Mr. BURTNESS. In other words, then, as a strictly legal proposition, it is your opinion that your carrier, or any other carrier, does not have any more legal right to it than any other?

Mr. GREEN. No, sir; not at all. I think that we are entitled to it, because it ought to belong and ought to be administered by the railroad company that produced it. The mere fact that the Government has title to the money, and it has passed out of our hands, as to control, in my judgment, proves again that when we try to help any industry as the Government has done in this recapture act we finally find that we have done an injustice and an injury to it, and if we leave it to the exercise of its own volition, its own policies, after all, it will work out better.

Now, if the Government takes this money and tries to administer it in a manner contemplated by the act, it would be punishing the properties which were persuaded—let us call it to consolidate—for the purpose of preserving transportation in that field, and without which payment this Illinois Terminal Co. could not then and never could have consolidated.

Mr. BURTNESS. That is, without the earning power for the future, as well as of the earning power for the past?

Mr. GREEN. Of the steam lines.

Mr. BURTNESS. But, of course, when you did unify, or whatever you want to call it, you did so knowing that this amount, at least, did at that time, if it had been ascertained correctly in so far as valuation is concerned, belong to the Government for certain purposes, rather than to the carrier. That is, you could not have unified upon the theory that eventually you would get this money you were forced to impound.

Mr. GREEN. Yes, sir; it is the opinion of some lawyers—and I am of that school—that this money never will be taken away from these railroads.

Now, of course, they did not hazard entirely their investment on that opinion, but we have always believed that the Government never would retain this \$1,600,000, because the unworkability of recapture would persuade Congress in its wisdom, seeing the fallacy of it, at the threshold, to repeal it, or the courts would protect us. However, our relations with the Interstate Commerce Commission have been so generally helpful, and they have been so courteous and considerate, that we have always felt that when the unworkability of the recapture act was demonstrated that Congress in its wisdom would see that nobody was punished.

Mr. BURTNESS. Was your unification before or after the decision in the Goose Creek case?

Mr. GREEN. Well, there have been two or three decisions. It was after the first, but before the matter of recapture was finally determined. It was still in litigation.

Mr. BURTNESS. Just one more question. If the period adopted in determining the recapture were extended to the full period that has intervened since the passage of the transportation act, or in the case of companies that have gone out of business, extended to the full period that they actually did operate, what effect would that have upon your claim, if you can tell us?

Mr. GREEN. Well, it would reduce it, because of the consolidation for operations, it would reduce itself, although, if it were extended 10 years the other way, there would be no recapture. For 20 years, these lines, after they were constructed, did not make their operating expenses. They never began to earn money until about 1920, and for two years they enjoyed a condition similar to that which the Congressman spoke about a while ago, but they were built up during all of that time without any dividends, without any return.

Mr. BURTNESS. The claim for recapture against this railroad that you speak of, was that for the whole number of years, from 1920 to 1928?

Mr. GREEN. From 1920 to 1928.

Mr. BURTNESS. And, is there a claim for each of those years?

Mr. GREEN. Well, all except 1928.

Mr. BURTNESS. From 1920 to 1927, inclusive; the 10 months of 1920, and all of the years up to 1928, the commission alleges that in each of those years, it did earn in excess of 6 per cent?

Mr. GREEN. That is correct. There was a very small amount at some times. It just began to earn money at that time, and, of course, was losing money for all of the years previous in which it was building up.

The CHAIRMAN. We are very much obliged to you, if there are no further questions.

Mr. BULWINKLE. Mr. Chairman, I have one question.

The CHAIRMAN. Mr. Bulwinkle.

Mr. BULWINKLE. Mr. Green, you said that the commission required a deposit of your road?

Mr. GREEN. Yes, sir.

Mr. BULWINKLE. Of \$1,600,000?

Mr. GREEN. Yes, sir.

Mr. BULWINKLE. Was that required in all cases?

Mr. GREEN. No; it was because they were planning this lease and we were purchasing the Illinois Terminal Co., and were to acquire by lease these other properties, and it was obvious that there would be no recapture for a while, unless the unified system became prosperous; and inasmuch as this company was passing out of the picture, as an independent line, they required that we first protect the Government in its claim, by depositing this much money, which was something more than they would finally claim, but by way of surety, since it was consolidated, and they wanted this guaranty that the road would pay whatever amount was determined to be due.

In that contract, we agreed that we would pay whatever amount was finally determined, if any.

The CHAIRMAN. We are very much obliged to you, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

**STATEMENT OF EVAN J. JONES, SPECIAL ASSISTANT TO GENERAL COUNSEL, AMERICAN SHORT LINE RAILROAD ASSOCIATION**

The CHAIRMAN. Mr. Jones, you have an hour and five minutes. You may distribute that among your witnesses as you desire.

Mr. JONES. If perchance we are not through in an hour and five minutes, can we have time to-morrow? I do not know how much time will be taken up by questions of the members of the committee, but this ought to be pretty much like a football game, you ought to count out the time.

The CHAIRMAN. That is a matter, Mr. Jones, that we can not control.

Mr. Thom, may I have your attention?

Mr. THOM. Yes, sir.

The CHAIRMAN. We must close with the short lines, and Mr. Thom's testimony, to-day and to-morrow.

Mr. JONES. If we intrude a little on your time, to-morrow, Mr. Thom, will you be able to get through?

Mr. THOM. I do not want to shorten anybody's time, Mr. Chairman. I will get through as soon as I can. I do not know what time it will take me. Of course, I can be subject to the orders of the committee.

The CHAIRMAN. All right.

Mr. JONES. It is pretty hard to tell, just at the start, just how long it is going to take, if we make any limit on time. It may be that we are able to say what we have in mind, but when we have these questions from the members of the committee, it is pretty hard to tell what the sum total will be.

The CHAIRMAN. We will try to do justice to you, if you will go ahead.

Mr. JONES. I appreciate that, Mr. Chairman.

I am appearing here in two capacities, one as vice president and general counsel of a short-line railroad in the Adirondacks, known as the Grass River Railroad; also as associate counsel of the American Short Line Railroad Association.

Now, personally, I do not purpose to take up any of the time of the committee in giving corroborative testimony to augment the testimony that has been given.

I want to say that we are fully in accord with the testimony that has been presented to the committee since these hearings opened, and I think our testimony will relate pretty nearly wholly to the question of the recapture provisions of 15a.

I think that the committee will be interested in getting the testimony from these people, because they represent the roads that were intended to be the beneficiaries of section 15a, and the way it has worked out, some roads having made an earning in one particular year, or two years, but for the sum total of the period that the act has run, they have been decidedly in the red, so that instead of being beneficiaries, if it is carried on to its last analysis, and the commission undertakes to enforce the mandate of the law, these roads, many of them, instead of being beneficiaries will be the decedents.

I want Mr. Robinson, who is president of the association, to make an opening general statement.

**STATEMENT OF BIRD M. ROBINSON, PRESIDENT OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION, WASHINGTON, D. C.**

The CHAIRMAN. You may proceed, Mr. Robinson.

Mr. ROBINSON. My name is Bird M. Robinson. I reside in Washington, and am president of the American Short Line Railroad Association.

Your chairman has requested us to limit our testimony to the extent that we can consistently, and we all complied.

I will therefore confine my statement to a few general phases with respect to the short line roads, represented by the association of which I am president, and our attitude with respect to H. R. 7117, particularly as regards the recapture provisions of section 15a of the interstate commerce act, and in the main, the short lines, is in this position, that is a misnomer, that term really means the weaker railroads. I realize that many, many larger main lines are now weak, but there are several conditions surrounding that class of roads that distinguish them from the comparatively short and weak roads.

With the exception of a very few of the main lines, our large systems are composed of short lines. The records will show that more than 6,000 short-line roads have been consolidated or merged into said systems.

That great majority of short lines were constructed as pioneer enterprises. They were developers and practically the only means of transportation in their respective communities, and rendered the citizens and enterprises on their lines invaluable service. But, they could not succeed finally for the reason that it is extremely difficult for short roads to succeed on the traffic which they originate on their own lines. But few of them handled through or overhead traffic. The result was that the more than 6,000 roads of that class had to be merged, or consolidated into the larger systems. When thus made into systems, they changed greatly, and became almost uniformly successful.

We still have approximately 600 of that class of roads. They serve hundreds of communities that do not have any other rail transportation facilities and the citizens located on such roads are in position to demand that those of them must be continued under terms and conditions that enable them to live, and render adequate service.

The great majority of the remaining roads of that class are now essential and will become a problem to their owners and to the public which they serve if and when merged into proper systems, as have the very large number of that class heretofore consolidated.

In the meantime, the existing weak roads of that class must struggle not only to meet and overcome the limited traffic conditions that is the necessity of existing upon traffic that originates upon their own rails which made it impossible for the 6,000 roads to succeed, but they must now meet an extensive and most unfair competition.

In this connection, I call attention to the fact that few if any of our large or small systems can exist solely on traffic which originates on their own rails. A large part of the short, weak roads must do so as long as they must continue as independently operated roads.

The American Short Line Railroad Association consists of approximately 400 of the really short-line roads, and not only speak for its

members with respect to the two bills, H. R. 7116 and H. R. 7117, but is authorized to speak for the great majority of nonmembers of that class of roads.

When the transportation act was being formed by Congress, this association aided to the extent possible in presenting the facts and information to this and other committees, and I feel that we then rendered a real service to said committees, to Congress, and to the public, as well as to the short lines, and other carriers.

We were invited by Mr. Warfield, who originated the plan, including the recapture part of it, if certain classes of roads came within the law, that it was to be done for the benefit of the short and weak roads, and he urged that this association and its officers join in his efforts to accomplish the object.

We gave consideration to that proposition and concluded that the plan was unsound, that it would not accomplish the objects stated, and we believed that it would prove to be a detriment, and we declined to aid the advocates of that proposition. They became aggressive and attempted to force us to support them in their efforts, even going so far as to threaten to disrupt the association by having members withdraw. Notwithstanding all of that, we did not aid.

Soon after the recapture law became effective, we found that in so far as weak and short lines were concerned it was a disillusion and a snare. It became apparent that that class of roads were not going to obtain any benefits therefrom, but they were going to be forced to incur heavy expenses in connection therewith, and I believe when any of them were fortunate enough to earn a little money in one or more isolated years, they were going to be forced to give one-half of the so-called excess earnings to the Government in connection with the expenses that are incurred in which short lines have been forced to incur. We made an inquiry recently among our members and we had replies to the extent of 144 regarding the total man-days, taking what the Interstate Commerce representatives had done, the time they had devoted to making examinations of these accounts. In 144 roads there were 38,342 man-days. Those particular roads spent 34,850 man-days in the examination of the accounts, and trying to ascertain the amount due.

The owners of these 144 roads were compelled to spend \$284,164.25 in expenses other than these man-days in connection with this, and as these 144 are only a small part of the total, it gives this committee some idea of the extent of the expenses these lines have been forced to incur.

That has been the result. That is the development, as we say, and the result, as we will show, by the few witnesses that we will be permitted to introduce.

This association has been very active for the repeal of this provision of the law. I am not permitted to ask the chairman of the committee to bear me out in that statement I have just made, but I am authorized to appeal to the former chairman, and he will finish my testimony with respect to our contests before this committee.

Mr. PARKER, will you testify?

Mr. PARKER. You have been very urgent, indeed, in advocating the repeal.

Mr. ROBINSON. Thank you.

Our position has at all times been that the law was unjust, unreasonable, unenforceable, and we have sought its repeal under all of the circumstances we could and wherever and whenever we were given an opportunity.

We have just had an opportunity to have our members and a lot of the nonmembers of the association together, so that they might give consideration to this problem again.

There was a large meeting of the short-line railroads, including members, nonmembers in this city day before yesterday. They adopted a resolution to be submitted to this committee. I am going to read it. It has been laid on the desk before you.

RESOLUTION ADOPTED BY AMERICAN SHORT LINE RAILROAD ASSOCIATION, FEBRUARY 2, 1932

Inasmuch as the recapture provisions of section 15a of the interstate commerce act have not only proven utterly useless to the necessitous railroads for which they were intended but, to the contrary, are a cloud upon the financial integrity of all the railroads, and if enforced would result in ruin to such short and weak railroads as are subject to the payment of recapturable excess, it is, therefore, the sense of this convention that all of the recapture provisions of section 15a of the interstate commerce act should be repealed and declared of no force or effect from the effective date of the transportation act of 1920. That all of the moneys which were recoverable by and payable to the United States or to the Interstate Commerce Commission under the provisions of paragraphs 5 and/or 6 of section 15a, as heretofore existing, shall cease to be recoverable, and all claims now existing, or proceedings pending, for the recovery of any such moneys shall be terminated, and within a reasonable time after repeal of such recapture provisions the railroad contingent fund then existing shall be returned to the carriers which have paid recapture earnings into such fund as the amount paid by the individual carrier bears to the total amount of earnings recaptured from the carriers, making due allowance in the matter of accumulated interest for differences in the dates of payment, so that said contingent fund as a whole shall be distributed to the contributing carriers in proportion to the amount of recaptured earnings paid in by each of them, after making due allowance, as aforesaid, for differences in dates of payment. The repeal of such recapture provisions should also provide that carriers which were required to place one-half of the recapturable excess in the reserve fund to be established and maintained by such carriers be allowed to appropriate and use such reserve as though the recapture provisions of section 15a had not been passed.

Mr. Chairman, I submit that as the position of the short lines of the country, not only that of the association that I speak for, and I am going to yield the amount of time that is left to Mr. Cain to deal with certain things, and then we desire to present some cases as illustrations of the result.

Mr. HOCH. I would like to ask if the returns of the short lines were pooled for the whole period, since the transportation act was passed, what would be the effect?

Mr. ROBINSON. It would be blank, there would be no recapture at all, not a cent.

Mr. HOCH. Would that be true of all of the roads, or simply of the whole?

Mr. ROBINSON. I anticipate that it would be true of all of the roads. I am not prepared to go as far as to say that that would be true of all of the short lines.

Mr. HOCH. Some of the roads did have prosperous years during that period?



Mr. ROBINSON. Yes; some of the short lines would have one or two years, where they would have heavy traffic as a result of building highway along their track or building dams, have an extraordinary amount of traffic. In the case of highways that were built along their lines, they would get that traffic perhaps for a year, and then they would have the competition of the motor cars which would proceed to take their business thereafter.

Mr. HOCH. Can you give us any information about the dividends that were paid by those roads, during those periods?

Mr. ROBINSON. I am not prepared to give that. We can probably supply it. I can ascertain it and supply it.

Mr. HOCH. It would be interesting to me, at least, to see whether these roads which had very prosperous years paid unusual dividends to their stockholders.

Mr. ROBINSON. It is not customary for the short lines to pay dividends. I am not familiar with any one that does.

Mr. HOCH. I would like to ask another question of some witness for the short-line roads. Do the short-line roads intend to take any position with regard to the other proposal in this bill with reference to the rule of rate making?

Mr. ROBINSON. Mr. Cain will deal with that subject. I was just dealing with the preliminaries, so if you will allow, any other questions that you have, I am sure he can answer, and present definite facts.

Mr. JONES. Mr. Cain.

#### STATEMENT OF BEN B. CAIN

Mr. CAIN. Mr. Chairman and gentlemen of the committee; I deeply appreciate the patience, and the intelligent way in which the committee has heard these bills discussed, hence I am not going to travel over any ground that has already been covered, by those who have preceded me.

My purpose is merely to get before you, if I can, a picture of the short-line situation as it is affected by the recapture, or as it would be affected by the bills pending before you.

I may say in the beginning, that we favor H. R. 7117, provided the recapture provision, which is the last part of that bill is made retroactive.

I have before me a statement showing the payments to the commission by each railroad and for each period up to the present time. It appears from this statement that first, out of 97 railroads that have paid money into the recapture fund only the following are class 1 railroads, as classified for statistical purposes by the Interstate Commerce Commission, that is, roads having annual operating revenues above \$1,000,000: Bessemer & Lake Erie Railroad Co.; Chicago & Illinois Midland Railway Co.; Detroit, Toledo & Ironton Railroad Co.; Detroit & Toledo Shore Line Railroad Co.; Duluth, Missabe & Northern Railway Co.; Elgin, Joliet & Eastern Railway Co.; Louisiana & Arkansas Railway Co.; Nevada Northern Railway Co.; New Orleans, Texas & Mexico Railway Co.; Richmond, Fredericksburg & Potomac Railroad Co.; Wichita Falls & Southern Railroad Co.

In other words, 11 class 1 roads have paid money into the recapture fund. Of course, 5 are located in the eastern district, namely, the Bessemer & Lake Erie Railroad Co., Chicago & Illinois Midland Railway Co., Detroit, Toledo & Ironton Railroad Co., Detroit & Toledo Shore Line Railroad Co., and Elgin, Joliet & Eastern Railway Co.; 1 is located in the southern district, namely, the Richmond, Fredericksburg & Potomac Railroad Co.; and 5 in the western district, namely, the Duluth, Missabe & Northern Railway Co., Louisiana & Arkansas Railway Co., Nevada Northern Railway Co., New Orleans, Texas & Mexico Railway Co., and Wichita Falls & Southern Railroad Co.

According to the statistics of railways in the United States for the year ended December 31, 1929, there were 61 class 1 roads in the eastern district, 33 in the southern district, and 68 in the western district.

The total miles of road operated in the eastern district, according to the statistics of railways in the United States for the year 1929, prepared by bureau of statistics, Interstate Commerce Commission, were 60,362.15, of which Bessemer & Lake Erie Railroad Co. operated 227.75, Chicago & Illinois Midland Railway Co. operated 131.64, Detroit, Toledo & Ironton Railroad Co. operated 517.36, Detroit & Toledo Shore Line Railroad Co. operated 50.24, Elgin, Joliet & Eastern Railway Co. operated 453.23, or a total of 1,380.22.

In the southern district the miles of road operated were 45,757.28, of which the Richmond, Fredericksburg & Potomac Railroad Co. operated 117.59.

In the western district, the miles of road operated were 135,895.21, of which the Duluth, Missabe & Northern Railway operated 305.12, Louisiana & Arkansas Railway Co. operated 636.49, Nevada Northern Railway Co. operated 165.87, New Orleans, Texas & Mexico Railway Co. operated 191.22, Wichita Falls & Southern Railroad Co. operated 204.17, a total of 1,502.87.

It thus appears that the class 1 railroads that have paid into the recapture fund are not only few in number, but they are not representative of the class 1 carriers. For example, the five class 1 carriers located in the eastern district that have paid into the recapture fund operate but 2.28 per cent of the total mileage operated by the class 1 carriers in the eastern district; and in the southern district but 0.28 per cent; and in the western district, 1.1 per cent.

All the other carriers that have paid into the recapture fund are either class 2 carriers, namely, carriers having operating revenues ranging from a minimum of \$100,000 to a maximum of \$1,000,000 per year; class 3 carriers, namely, those having annual operating revenues below \$100,000 a year; or else short switching and terminal carriers.

It is a surprising thing that after more than 10 years of operation under the recapture provisions, not a single representative class 1 common carrier has as yet paid anything into the recapture fund. This should be sufficient in itself to show that the recapture clauses have not worked out practically as they were intended to work.

Many class 2, class 3, and switching and terminal carriers which have reported recapturable earnings and paid the same into the re-

volving fund have not earned any excess income in other years, but, in fact, have shown an operating deficit. I have a list of all such carriers, alphabetically arranged, showing the amount of recapturable excess paid to the commission by individual carriers in one or more years within the period 1920 to 1930, inclusive. I desire at this point, with consent of the chairman of the committee, to file this statement, and call attention to facts relating to certain short-line railroads as appears therein.

May I have that privilege, Mr. Chairman?

The CHAIRMAN. You may.

Mr. CAIN. I would like to have it go in the record without my going through any of these figures.

The CHAIRMAN. Yes, sir.

(The statement above referred to faces this page.)

Mr. CAIN. I cite a few examples, taking them as they come in after, or on the statement.

Atlantic & Carolina Railroad Co., which paid \$364.57 into the recapture fund for the year 1926, had a deficit of \$406 in 1928, a net income of \$3,205 in 1929, and a deficit in 1930 of \$4,285. It did not meet its fixed charges in 1930.

Augusta Northern Railroad Co., which has paid a total of \$5,070.80 into the recapture fund, distributed over the years 1922 to 1926, inclusive, had a deficit in railway operating income of \$1,033 in 1930. It did not meet its fixed charges in that year, which were \$8,250.

The Bay Terminal Railroad Co., which paid \$2,449.74 into the recapture fund, distributed in the years 1922 and 1923, had a total operating deficit in the years 1928, 1929, and 1930, ranging from \$63,279 in 1928 to \$18,637 in 1930.

Central Railway Co. of Arkansas, which paid \$2,064.44 into the recapture fund, applicable to the years 1922, 1923, 1925, and 1926, had a total operating deficit of \$8,205 in the year 1930. The payments made by this road into the recapture fund are final payments.

East Jordan & Southern Railroad Co., which has paid \$4,753.61 into the recapture fund applicable to the year 1921, had a railway operating deficit in 1929 of \$12,890, and in 1930 of \$10,682.

The five roads above mentioned are typical of a number of others which have paid money into the recapture fund for one period, but in others have experienced a deficit from their railway operations or in their net income after payment of fixed charges and other deductions from gross income. Among such roads, as shown in this exhibit, are the following:

Fordyce & Princeton R. R. Co.; Hannibal Connecting R. R. Co.; Indiana Northern Ry. Co.; Kanawha, Glen Jean & Eastern R. R. Co.; Longview, Portland & Northern Ry. Co.; Louisville, New Albany & Corydon R. R. Co.; Ludington & Northern Ry.; Mount Hood R. R. Co.; Rockport, Langdon & Northern Ry. Co.; San Joaquin & Eastern R. R. Co.; South San Francisco Belt Ry.; and Warren & Ouachita Valley Ry. Co.

With the consent of the committee, I would like at this point to file another statement which shows the amount of recapturable in-

# EXHIBIT A

Payments made by carriers of one-half of their excess net railway operating income, as preliminarily computed, under paragraph (6) of section 15a of the interstate commerce act, since the effective date of said act, to October 31, 1931

		Year to which applicable												Undistrib- uted by years	Total
		1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930			
2W	Ashley, Drew & Northern Ry. Co.			\$2,466.29			\$3,344.82							\$5,811.11	
3S	Atlantic & Carolina R. R. Co.							\$364.57						364.57	
3W	Augusta R. R. Co.					47.83								47.83	
3S	Augusta Northern Ry.			146.26	\$490.87	3,808.19	1,106.94	18.54						5,070.80	
3W	Bauxite & Northern Ry. Co.	\$7,979.03			3,872.69									11,851.72	
STE	The Bay Terminal R. R. Co.			1,569.98	879.76									2,449.74	
3W	Beaver, Meade & Englewood R. R.										\$1,431.45			1,431.45	
1E	Bessemer & Lake Erie R. R. Co.				442,280.00									442,270.00	
STS	Birmingham Southern R. R. Co.			31,371.43										31,371.43	
3W	Brimstone Railroad & Canal Co.		\$5,774.73	21,731.40	15,136.08									42,642.21	
3W	Cambria & Indiana R. R. Co.	18,630.46												18,630.46	
2S	Campbell's Creek R. R. Co.		548.53											548.53	
3W	Central Ry. Co. of Arkansas (final)			1,032.27	105.78		157.38	769.01						2,064.44	
2S	Chattahoochee Valley Ry. Co.						16,140.12							16,140.12	
1E	Chicago & Illinois Midland Ry. Co.	73,060.16			78,783.94		47,375.65							199,219.75	
STW	Chicago, West Pullman & Southern R. R.				5,035.68									5,035.68	
3S	Collins & Glenville R. R. Co.						162.50							162.50	
STE	Conemaugh & Black Lick R. R. Co.									5,345.50	76,574.00			81,919.50	
2E	Cornwall R. R. Co.	65,622.96		22,766.82	45,724.52			1,303.18		2,408.00	39,266.00			177,091.48	
2W	Cowlitz, Chehalis & Cascade Ry.				3,000.00									3,000.00	
2W	Dayton-Goose Creek Ry. Co. (see note)	4,963.20	10,663.64	24,576.68	35,568.80	21,827.03	85,528.03							183,127.38	
STE	Dayton-Union Ry. Co.				963.81									963.81	
3S	DeKalb & Western R. R. Co.						10,025.47							10,025.47	
1E	Detroit, Toledo & Ironton R. R. Co.					239,461.63								239,461.63	
1E	Detroit & Toledo Shore Line R. R. Co.	21,528.88		31,252.82				15,229.73						68,011.43	
1W	Duluth, Missabe & Northern Ry. Co.	620,000.00		89,000.00	2,142,000.00		545,892.85	366,777.60						5,808,256.61	
2S	Durham & Southern Ry. Co.								22,734.93	364,780.35	1,679,805.81			54,989.20	
STE	East Jersey Railroad & Terminal Co.			3,332.61						10,738.79	21,515.48			3,332.61	
3E	East Jordan & Southern R. R. Co.		4,753.61											4,753.61	
1E	Elgin, Joliet & Eastern Ry. Co.				55,147.23									55,147.23	
3E	Erie & Michigan Railway & Navigation Co.			2,297.08										2,297.08	
3W	Fordyce & Princeton R. R. Co.		8,697.50											8,697.50	
STW	Fort Worth Belt Ry. Co.		4,963.37	18,577.74	23,821.07	19,865.44	12,257.73							79,485.35	
2W	Franklin & Abbeville Ry. Co. (see note)		3,523.72	11,706.46										15,230.18	
2E	Genesee & Wyoming R. R. Co.	46,515.58	55,144.06	100,070.13	65,456.21	61,208.16	58,379.87	47,323.03	20,179.71	18,822.93	12,430.06	577.82		486,107.56	
3W	Gideon & North Island R. R. Co.	980.71												980.71	
STW	Hannibal Connecting R. R. Co.			10,619.33	6,913.16									17,532.49	
	Hutchinson & Northern R. R. Co.				154.25									154.25	
3E	Indian Creek Valley Ry. Co. (see note)			3,852.92										3,852.92	
2W	Illinois Terminal R. R. Co. (see note)												800,000.00	800,000.00	
STE	Indiana Northern Ry. Co.	2,140.67					802.25							2,942.92	
STE	Ironton R. R. Co.	27,220.43	61,462.41	98,772.94	163,634.97	136,630.16	86,918.25							574,639.16	
STE	Johnstown & Stony Creek R. R. Co.			1,162.49										1,162.49	
2W	Jonesboro, Lake City & Eastern R. R. Co. (see note)			24,920.59	17,529.41									42,450.00	
2S	Kanawha, Glen Jean & Eastern R. R. Co.							5,460.88						5,460.88	
3S	Kinston Carolina R. R. Co.		62.91											62.91	
2E	Lakeside & Marblehead R. R. Co.			271.94	5,206.51									5,478.45	
2S	Lancaster & Chester Ry. Co.			14,760.90										14,760.90	
STW	LaSalle & Bureau County R. R. Co.			5,701.72	6,695.90	6,024.23								18,421.85	
3S	Laurinburg & Southern R. R. Co.		2,518.23											2,518.23	
2E	Ligonier Valley R. R. Co.	37,521.23	4,035.60	21,606.44				5,310.43						63,165.27	
2W	Longview, Portland & Northern Ry. Co.													5,310.43	
1W	Louisiana & Arkansas Ry. Co.				8,002.02									8,000.02	
	Louisiana & Mississippi R. R. & Transfer Co.	20.03												20.06	
3E	Louisville, New Albany & Corydon R. R. Co.						534.50	524.50		2,241.00				3,300.03	
STE	Ludington & Northern Ry.	38.14	1,448.39				1,379.03							2,865.50	
2E	Middletown & Unionville R. R. Co.	51.71												51.71	
STW	Missouri & Illinois Bridge & Belt R. R. Co.				3,026.82									3,026.82	
3W	Mount Hood R. R. Co.				1,614.73									1,614.73	
3E	Mount Hope Mineral R. R. Co.				1,396.84									1,396.84	
3W	Natchez, Uman & Ruston Ry. Co.				87.69									87.69	
3W	Neame, Carson & Southern R. R. Co. (see note)			2,120.41								46.14	397.12	530.95	
1W	Nevada Northern Ry. Co.													2,120.41	
1W	New Orleans, Texas & Mexico Ry. Co.				5,248.35									39,729.26	
STE	Patapasco & Back Rivers R. R. Co.			31,147.97	45,353.50									5,248.35	
STE	Philadelphia, Bethlehem & New England R. R. Co.				1,477.07									50,355.00	
2E	Pittsburgh, Lisbon & Western R. R. Co.	2,341.50		8,994.51	30,239.06	37,302.23	45,229.31	21,622.18	19,211.61	32,401.97				152,191.47	
2E	Port Huron & Detroit R. R. Co.			1,005.81										3,818.57	
2E	Potato Creek R. R. Co. (see note)			109,343.37	25,576.51									195,000.87	
1S	Richmond, Fredericksburg & Potomac R. R. Co.													194,919.88	
3W	Rockport, Langdon & Northern Ry. Co.	441.10												441.10	
2W	San Joaquin & Eastern R. R. Co.														
3W	San Luis Central R. R. Co.														
2W	San Antonio Southern Ry. Co.	2,460.86												2,460.86	
3W	Santa Maria Valley R. R. Co.	3,500.00												3,500.00	
3W	Shreveport, Houston & Gulf R. R. Co.			1,674.27										1,674.27	
STW	Sioux City Terminal Ry. Co.			455.78	1,014.63	3,879.18								5,349.59	
STE	South Buffalo Ry. Co.			23,768.50										23,768.50	
STW	South San Francisco Belt Ry.								1,374.54					1,374.54	
STW	St. Joseph Belt Ry. Co.		685.72	1,939.04										2,624.76	
STE	Steelton & Highspire R. R. Co.				7,410.21	2,156.98					23,629.00			42,935.90	
2W	Sugar Land Ry. Co.	25,080.30		1,873.72	481.65			9,739.71						27,435.67	
3S	Talbotton R. R. Co.				36.56									36.56	
2E	Tionesta Valley Ry. Co.		13,102.90	7,841.52										20,944.42	
STE	Toledo Terminal R. R. Co.			18,337.07										18,337.07	
3W	Trinity Valley Southern R. R. Co.			17.65		84.72								102.37	
2E	Tuckerton R. R. Co.		564.84					3,549.12						4,113.96	
2W	Tucson, Cornelia & Gila Bend R. R. Co.				11,997.34	1,464.37								11,997.34	
3S	Tuskegee R. R. Co.				1,016.53	2,356.33								2,480.90	
3S	Unity Railways Co.	920.86			9,309.77	2,356.33	35,730.05	27,613.37		25,012.15	25,207.21	15,699.85		141,849.59	
2E	Upper Merion & Plymouth R. R. Co.						2,984.58							2,984.58	
3W	Warren & Ouachita Valley Ry. Co.		7,339.26	424.15	6,681.04									14,444.45	
3S	Warrenton R. R. Co.		1,909.15	3,496.99	3,302.89	455.87	3,831.78	1,410.51	4,964.49	4,420.34	5,461.69	3,148.50		32,222.21	
3E	Washington, Brandywine & Point Lookout R. R. Co.				85.19									85.19	
3E	Washington Run R. R. Co.		411.02		4,548.16								1,600.00	6,744.83	
1W	Wichita Falls & Southern R. R. Co.					369.71								369.71	
STE	Wyandotte Terminal R. R. Co. (final)				3,899.66	1,381.13		2,960.38						8,241.17	
	Total	961,017.81	182,609.50	812,845.04	3,290,204.92	537,823.19	961,330.23	506,427.62	81,436.08	476,516.03	2,040,616.10	19,823.29	801,600.00	10,681,249.90	

## Symbols:

1 means Class I carrier, as defined by the Interstate Commerce Commission.  
2 means Class II carrier, as defined by the Interstate Commerce Commission.  
3 means Class III carrier, as defined by the Interstate Commerce Commission.  
ST means switching and terminal companies, as shown in the Statistics of Railways in the United States, prepared by the Interstate Commerce Commission.  
E means Eastern district, as defined by the Interstate Commerce Commission.  
S means Southern District as defined by the Interstate Commerce Commission.  
W means Western District, as defined by the Interstate Commerce Commission.  
The classification of the carriers listed on Exhibit A is made in accordance with statistics of railways, year ending Dec. 31, 1929, except as to following roads, in which classification is made in accordance with statistics of railways for the year ending Dec. 31, 1923:

Dayton-Goose Creek Ry. Co.: Now a subsidiary road leased by Southern Pacific Co. under date of May 1, 1926.  
Franklin & Abbeville Ry. Co.: Leased to Texas & New Orleans Ry. Co., Mar. 1, 1927.  
Illinois Terminal R. R. Co.: On Dec. 31, 1923, name changed to Illinois Terminal Co. The 1929 report shows Illinois Terminal Co. classified as Class I road, eastern district.  
Indian Creek Valley Ry. Co.: Now a nonoperating company. It is controlled through ownership of entire capital stock by Baltimore & Ohio R. R. Co.  
Jonesboro, Lake City & Eastern R. R. Co.: Now a subsidiary company of St. Louis-San Francisco Ry. Co.; nonoperating.  
Neame, Carson & Southern R. R. Co. and Potato Creek R. R. Co.: These two companies not indexed in forty-third annual report for year ending Dec. 31, 1929.



come claimed from individual railroads for different years in the period 1920 to 1928, inclusive.

This is an exhibit that has been prepared in our office, Mr. Chairman, and gentlemen of the committee, and is intended to show, and does show, in fact, the recapturable excess claimed by the commission, but not paid. In other words, it contains a statement of all of the roads against which the commission is now claiming a recapturable excess.

May I file that, Mr. Chairman?

The CHAIRMAN. Yes.

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May I file that, Mr. Chairman?

The CHAIRMAN. Yes.

## RAILROAD LEGISLATION

EXHIBIT No. 2  
Statement of "recapture of excess income" cases of American Short Line Railroad Association member lines

Finance docket	Name of carrier	Class	Amount claimed by Interstate Commerce Commission to be recapturable									
			1920 (portion)	1921	1922	1923	1924	1925	1926	1927	1928	Total
4063	Arkansas & Louisiana Missouri Ry.	2	\$1,511.02	\$6,605.80	\$13,912.89	\$14,976.44	\$4,191.56	\$3,063.10				\$14,861.41
5716	Birmingham & Southern R. R. Co.	2										90,101.23
3659	Central Ry. Co. of Arkansas	3			1,032.27	105.78		35,876.81	\$89,782.81	\$14,450.61		2,064.44
3660	Central West Virginia and Southern R. R. Co.	2	9,000.84	23,535.53	3,023.69			157.38				37,560.06
3664	Chattahoochee Valley Ry. Co.	2		1,767.80								24,760.07
3686	Cornwall R. R. Co.	2	71,928.31									1,769.24
3715	East Jordan & Southern R. R. Co.	2	78.62	6,612.19	35,124.45			24,013.17	211.74	1,647.50		183,237.95
3722	Erle and Michigan Railway and Navigation Co.	2						9,773.55	5,269.55	922.43		16,832.90
3744	Georgia Southwestern and Gulf R. R. Co.	3	4,344.78	6,034.91	7,807.00	4,639.42	8,063.78	8,624.53	17,731.59			58,151.01
3758	Illinois Connecting R. R. Co.	2	9,783.00		4,451.56	1,449.48	3,080.20					18,873.24
3764	Illinois Northern R. R. Co.	2			14,072.86	1,547.63	1,000.24	2,510.09				29,821.42
3776	Johnstown & Stony Creek R. R. Co.	2				8,032.48		24,033.21	38,784.51			70,850.20
3794	Lake Erie, Franklin & Clarion R. R. Co.	2		5,776.76	19,091.42							24,868.18
3795	Lakeside & Marblehead R. R. Co.	2	11,326.07	30,005.28	18,951.71	9,017.84		2,897.05		8,555.88		72,335.99
3796	Lake Terminal R. R. Co.	2		7,981.56	10,846.42							18,017.84
3798	La Crosse & River R. R. Co.	2			11,131.98	5,543.29	15,213.81	14,092.01	7,855.44	17,139.05		70,965.88
4001	La Salle & Bureau County R. R. Co.	2			10,396.57	13,028.31	7,540.01		7,781.34	5,273.95		61,068.78
3804	Laurinburg & Southern R. R. Co.	2	342.41	11,761.31	25,462.52	4,812.61			109.52			24,096.69
3808	Ligonier Valley R. R. Co.	2	29,203.20	19,433.84	25,462.52							74,126.61
5622	Live Oak, Perry & Gulf R. R. Co.	2	1,626.78	9,218.16	13,046.73	40,330.95	18,317.94	11,044.72				93,583.19
5748	Louisiana Southern Railway Co.	2						31,093.33				31,093.33
3820	Lowville, New Albany & Corydon R. R. Co.	2										
3820	Manfield Ry. & Trans. Co.	2	2,530.59	10,266.36	5,490.85	2,736.08	2,718.44	534.50	524.50	\$2,241.00		3,300.00
3827	Middletown & Unionville R. R. Co.	2	1,796.54	5,797.45	40.55		7,719.29	6,842.74		5,888.60		24,070.32
3844	Montana, Wyoming & Southern R. R. Co.	2	9,347.93	14,310.63	23,897.07	12,613.55	24,722.39	14,600.65	12,022.69	17,124.78		28,043.17
3847	Moscow, Camden & San Augustine R. R. Co.	2							2,324.66	772.09		128,609.69
3849	Mt. Hood Railroad Co.	3			7,920.89	1,316.92	15,114.58	11,698.08				3,094.75
3856	Nevada Northern Railway Co.	2			7,822.47	97,032.88	97,032.88	104,062.13	110,072.10	78,739.26		38,021.07
3866	Northampton and Bath R. R. Co.	2			12,696.73	20,045.45	6,638.25		10,563.93	9,809.41		546,276.91
	Total											78,660.10

4120	Port Huron & Detroit R. R. Co.	2			9,981.89	35,224.11	41,311.22	49,330.65	23,459.62	29,129.24	35,840.66	224,777.49
3903	Roscoe, Snyder & Pacific R. R. Co.	2	10,105.02	8,363.49	3,856.53	29,022.17	21,840.11	20,254.00	22,961.00	21,563.32		137,803.94
3919	San Luis Central Railroad Co.	3						509.23	6,124.59	17,689.11		24,322.93
3921	Santa Maria Valley Railroad Co.	3	7,339.69	2,259.33	2,630.45							7,339.69
3927	Shreveport, Houston & Gulf R. R. Co.	3				781.50	7,054.17	15,833.57	15,746.52			5,159.78
4770	Silverton Northern R. R. Co.	3	3,241.32	673.48		859.00	2,897.32	10,746.63	6,623.72			42,707.08
4854	Tuckerton Railroad Co.	2				16,583.11	9,746.68	43,914.30	37,714.72			1,949.68
3970	Unity Railways Co.	3	1,255.31	2,755.51	3,997.58	4,281.15	1,174.06	4,348.33	1,804.75	5,576.79		109,215.12
3979	Warrenton Railroad Co.	3	1,003.95									24,942.12
41	Total											2,598,138.67

1 Proposed reports issued.

Amount claimed by Interstate Commerce Commission to be recapturable

MEMBERS

Finance docket	Name of carrier	Class	1920	1921	1922	1923	1924	1925	1926	1927	Total
3844	Brooklyn Eastern District Terminal	3			\$143,807.05	\$96,672.71	\$63,253.38	\$106,530.76	\$96,930.70	\$62,401.58	\$589,145.79
3845	Carolina & Northeastern R. R. Co.	3		\$19,546.61		1,496.62					1,496.62
3853	Chesapeake & Potomac R. R. Co.	3				1,444.35		28,555.51	4,391.07	10,070.18	4,000.00
4006	Chicago, West Pullman & Southern R. R. Co.	3		3,045.29							3,045.29
5609	Yosemite Valley R. R. Co.	2	\$14,594.63	3,468.11	1,214.53	24,380.83	3,432.31	29,094.65	21,962.24		94,709.19
3923	Augusta Northern Ry.	3			7,167.72		164,401.08				175,066.91
3977	Chicago Short Line Ry. Co.	3			1,069.35	2,908.22	4,658.72	3,803.19	1,709.44	781.68	14,450.60
	Total					27,991.29	127.31	33,047.62	47,281.32	32,788.00	141,236.54
											1,063,916.05

## RAILROAD LEGISLATION



Statement of "Recapture of excess income" cases of American Short Line Railroad Association member lines

Finance docket	Name of carrier	Class	Value for rate-making purposes as tentatively fixed by Interstate Commerce Commission (stated in thousands of dollars)										Primary valuation reported at—		Remarks	
			1920	1921	1922	1923	1924	1925	1926	1927	1928	Interstate Commerce Commission		Valuation report		
												Vol- ume	Page	Vol- ume		Page
4063	Arkansas & Louisiana Missouri Ry. Co.	2	485	875	990	975	980	990				135	424		Application filed to abandon this line (D. 8546). A abandonment of this line pro- posed. (154 I. C. 539).  No primary valuation.	
5716	Birmingham & Southeastern R. R. Co.	2						935	960	1,065		135	34			
3659	Central Railway Co. of Arkansas	3	200	190	190	185	180	180	175			103	274			
3660	Central West Virginia and Southern R. R. Co.	2	790	775	730	650	590	570	565	555		116	181			
3664	Chattahoochee Valley Ry. Co.	2	715	710	715	720	715	720				106	539			
3681	Collins & Glenville R. R. Co.	2		170	170	180	180	190				135	653			
3686	Cornwall R. R. Co.	2	1,035	1,225	1,275	1,325	1,485	1,500				110	353			
3722	East Joint & Southern R. R. Co.	3	540	525	490	475	465	450	430	415		133	677			
3744	East Virginia & Maryland Ry. Co.	3	110	100	95	100	105	110	120			114	594			
3748	Georgia Southern and Gulf R. R. Co.	3	185	181	590	555	570	570				108	510			
3764	Hannibal Connecting R. R. Co.	2	2,100	2,050	2,035	2,060	2,090	2,130	2,180			29	210			
3776	Illinois Northern Ry.	3	315	315	340							123	306			
3784	Lake Erie, Franklin & Clarion R. R. Co.	2	995	990	1,020	1,005	960	925	875	805		130	474			
3787	Lake Erie & Western R. R. Co.	2				565						133	497			
3788	Lancaster and Chester Ry. Co.	2	2,850	2,770								141	73			
3790	La Salle & Bureau County R. R. Co.	2	176	174	168	176	201	210	206	207		115	511			
4001	Laurinburg & Southern R. R. Co.	3	267	272	401	435	471	470	468	460		125	213			
3804	Leonor Valley R. R. Co.	2	990	955	705							116	27			
3806	Liv Oak, Perry & Gulf R. R. Co.	2	885	930	970	950	965	1,010				135	424			
3820	Louisiana Southern Ry. Co.	2							930			29	633			
3827	Louisville New Albany & Corydon R. R. Co.	2	92	90	88	85	82		146	138		116	27			
3844	Mansfield Ry. & Transportation Co.	2	455	465	465	475	475	485	495			125	143			
3847	Montana, Wyoming & Southern R. R. Co.	3	805	800	775	770	800	805	795	800		135	217			
3848	Moscow, Camden & San Augustine Ry. Co.	3	89	85	76	78	68	65	71	74		106	680			
3856	Mount Hood R. R. Co.	1				535	555	545	201	195		106	572			
3858	Nevada Northern Ry. Co. <sup>1</sup>	2	228	213	213	204	204					149	244			
3860	Northampton and Bath R. R. Co.	2	455	460	450	445	435	430				125	195			
4120	Port Huron & Detroit R. R. Co.	2	545	545	560	560	565	560	590	625	640	125	889			

Application filed to abandon operations (P. D. 8546.)  
Abandonment of line authorized. (154 I. C. C. 556.)  
No primary valuation.

5669	Prescott & Northwestern R. R. Co.	2	32	38	390	394	396	400	410			103	494		
3903	Roscoe, Snyder & Pacific R. Co.	2	38	185	37	36	36	36	37	37		97	1		
3910	San Luis Central R. R. Co.	3										26	109		
3921	Santa Maria Valley R. R. Co.	3	340									130	696		
3927	Shreveport, Houston & Gulf R. R. Co.	3	104	103	100	98	97	95	93			127	632		
3770	Silverton, Northern R. R. Co.	2	270	260	235	240	205	190				108	479		
3857	Tucker R. R. Co.	2	610	600								108	479		
4648	Tuskegee R. R. Co.	3	125	125	125	120	120	145	215	210		125	195		
3970	Unity Rys. Co.	3	415	410	390	390	395	410	415	415		143	833		
3979	Warrenton R. R. Co.	3	53	52	58	62	62	61	59	59		119	25		

Final recapture report. (175 I. C. C. 318.)

1 Proposed reports issued.

## RAILROAD LEGISLATION

Statement of "Recapture of excess income" cases of other than member lines

[illegible]

Amount claimed by interstate commerce commission to be recapturable

## NONMEMBERS

[illegible]

Proposed reports issued.

Statement of "recapture of excess income" cases of other than member lines

Finance Docket	Name of carrier	Class	Value for rate-making purposes as tentatively fixed by Interstate Commerce Commission (stated in thousands of dollars)										Primary valuation reported at—				Remarks
			1920	1921	1922	1923	1924	1925	1926	1927	1928	Interstate Commerce Commission		Value reported			
												Vol- ume	Page	Vol- ume	Page		
3602	Alabama & North Western R. R. Co.	3	205	205	200	200	205	205	205	200		116	602		No primary valuation.		
4060	Alton & Southern R. R.	3		2,100	2,125	2,175	2,350	2,450	2,750	2,925		149	22				
3627	Batesville Southwestern R. R.	3		305								130	761				
3628	Bath & Hammondsport R. R. Co.	3	185									121	474				
3629	Baxendale & Northern Ry. Co.	3	135		130	140			135			141	474		Subsidiary of New York Central.		
3643	Bristow Railroad & Canal Co.	3	338	398	370	385	377	346				141	445				
3654	Canton R. R. Co.	3	2,360	2,745	2,925	2,900	292	475		606		133	755				
4313	Cuyahoga Valley Ry. Co.	3	5,633	5,733	6,465	6,881						114	259	27			
3701	Detroit Terminal R. R. Co. <sup>1</sup>	3					645	640	630	620		130	277		No primary valuation. Cases reported Aug. 10, 1922. (79 I. C. C. 78.)		
5094	Elva & Montrose R. R. Co.	3	620	635	660	645						135	1				
3733	Franklin & Allegheny R. Co.	3	605	620	640	685	810	815	805	790		135	1				
3740	Genesee & Wyoming R. R. Co.	3		197								135	1				
3746	Glady & Alpena R. R. Co.	3													No primary valuation.		
3753	Great Western Ry. Co.	2	2,100	2,120	2,080	1,970	1,965	1,950	1,925	1,910		125	674				
3765	Illinois Traction Co.	2	1,965	2,120	2,210	2,240	2,250					130	326				
5227	Indiana Creek Valley Ry. Co.	2	74	465	460	455	470					108	446				
3767	Indiana Northern Ry. Co.	2	4,100	4,525	4,400	7,550	9,825	9,650	9,400	9,150		108	795	32			
3770	Interstate R. R. Co.	2	684	699	695	725	748					97	434		No primary valuation.		
3773	Ironton R. R. Co.	2					1,411	1,487				135	849				
3778	Jonesboro, Lake City & East- ern R. R. Co. <sup>1</sup>	2	2,170	1,945	1,895							116	199				
3811	Louisiana & North West R. R.	2	39	37	36	36	37	36	35	33							
3817	Ludington & Northern Rail- way.	3													See St. Louis & O'Fallon Ry. Co.		
4026	Manufacturers' Ry. Co.	3															
3829	Midland Valley R. R. Co.	1	15,300	15,500	15,700	15,800						141	380				

4159	Mount Hope Mineral R. R. Co.	3	136		323,000	336,500	349,000	369,500	379,500	102		125	321	26	255	Rehearing granted.
3965	Norfolk & Western Ry. Co.	1	80		1,180	1,135	1,140	1,145	1,110			133	394			No primary valuation.
3953	Oil Fields Short Line R. R. Co.	2	1,170		95,500	95,400	100,500	108,000	111,500			130	497	29	186	Now operated by Santa Fe. (111 I. C. C. 542.)
3973	Oklahoma, New Mexico & Pacific Ry. Co.	2	390	440	410	375	350	345								
3874	Oregonian Ry. Co.	2	95,500	95,500	95,500	100,500	108,000	111,500								
3885	Pere Marquette Ry. Co.	1	15,350													
8552	Pittsburg & Shawmut R. R. Co.	2	555	450	370	160	125	115	100	95		119	329	31	667	Road abandoned Oct. 1, 1927. (131 I. C. C. 481.)
4338	Potato Creek R. R. Co.	2	500	490	450	425	430	425	370	300		125	388			
3997	Reynoldsville & Falls Creek R. R.	3	29,600	29,700	29,400	30,100								31	227	Final decision. (170 I. C. C. 451.)
3898	Richmond, Fredericksburg & Potomac R. R. Co.	1	610	625	620	630	645	630	620	620		133	623			No primary valuation. First decision of Interstate Commerce Commission (114 I. C. C. 3). Reversed by Supreme Court of the United States.
3906	St. Joseph Belt Ry. Co.	3	856	875	978	978										Road abandoned Dec. 31, 1928. (138 I. C. C. 717.)
3908	St. Louis & O'Fallon Ry. Co.	2														Road abandoned. (111 I. C. C. 747.)
5923	Salem, Winona & Southern	3	118									114	283			
4002	Smoky Mountain Ry. Co.	3		155		147	146	144	142	130		108	200			
3939	Sugar Land Ry. Co.	2	645	710	760	795	895	930				97	131			
3972	Utah Railway Co.	1	7,525									141	545			
3978	Warren & Ouachita Valley Railway Co. <sup>1</sup>	3	310	295	285	280	275	280	270			108	721			
3968	Wyandotte Terminal R. R. Co.	3				495	495	485	490			121	495			
3994	Youngstown & Northern R. R. Co.	3			745			720	705	735		116	475			Final decision. (175 I. C. C. 326.)

<sup>1</sup> Proposed reports issued.



Statement of payments made to the Interstate Commerce Commission by carriers of one-half of their excess net railway operating income

Year paid	Year to which applicable										Total	Undistributed, by years	Interstate Commerce Commission annual report (page)
	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930		
1922												\$25,237.86	30
1923												96,675.10	20
1924												4,995,197.27	261
1925												732,448.34	269
1926												900,403.57	291
1927												826,271.44	300
1928												599,920.12	315
1929												2,942,484.65	328
1930												31,636.74	343
1931												10,843,162.96	

\* Represents deduction account of alleged overpayment previously made.

The first two sheets of this statement is a list, in alphabetical order, of short lines claimed by the commission to be in the recapture class. The statement shows the recapturable income for each particular year. In the first column is the number of the commission's finance docket, and in the last column, the total recapturable amount claimed.

Sheet 3 is a list of the same railroads, showing the value for rate-making purposes as tentatively fixed by the commission for each year, the amounts being stated in thousands of dollars. With the information contained on this sheet it can be determined whether or not in any year the individual carrier earned less than a fair return or, as is frequently the case, earned an actual operating deficit.

Sheets 4, 5, and 6 contain the same information as to nonmember lines, and sheet 7 shows the aggregate amount of payments made by individual carriers within the period 1922 to 1930, inclusive, together with the year in which payments were made and the number and page of the I. C. C. report on which action of the commission appears.

According to page 92 of the annual report of the Interstate Commerce Commission for the year 1931, the commission has instituted recapture proceedings against 105 railroads, involving an approximate amount of \$43,574,340 recapturable excess income. In only three cases out of this total number has a final decision been reached by the commission. Only one of these involves any considerable sum. That case is Excess Income of Richmond, Fredericksburg & Potomac Railroad Co. (170 I. C. C. 451), decided April 7, 1931, and is now headed for the courts.

Most of the pending recapture proceedings are directed against class 2, class 3, and switching and terminal carriers.

Seventy-one recapture proceedings have been initiated under the so-called tentative excess-income report procedure. In 67 of these proceedings no final report has been issued.

An examination of the last-mentioned statement, which for convenience I will refer to as Exhibit No. 2, will show that none of the carriers listed have had a recapturable excess in every year. On the contrary, a number of these carriers appear to have had a recapturable excess in one or two years, while in other years they earned less than a fair return, and in some instances had an actual operating deficit. For example, there are included in the list of member lines the Prescott & Northwestern Railroad Co., located in the State of Arkansas; the Louisiana Southern Railway Co., located in the State of Louisiana; the Moscow, Camden & San Augustine Railway, located in the State of Texas; and the Nacogdoches & Southeastern Railroad Co., located in the same State.

The CHAIRMAN. The last sheet that you filed applies to the short lines only?

Mr. CAIN. The short lines only. The statement does include all of the carriers, as I show. That is the nonmember lines; there is one sheet that includes the nonmember lines, which includes the Richmond, Fredericksburg & Potomac, as having—

The CHAIRMAN. It includes no class 1 railroads?

Mr. ROBINSON. The Richmond, Fredericksburg & Potomac.

Mr. CAIN. No, Mr. Chairman; it is in two parts. To make myself clear, the first part of this exhibit shows the recapturable excess claimed against the member lines, which are all short-line railroads.

The CHAIRMAN. Yes.

Mr. CAIN. The last part of it shows the recapturable claims being asserted against nonmembers, and that includes, of course, class 1 carriers.

The CHAIRMAN. That includes both classes?

Mr. CAIN. Against such carriers, class 1 carriers, as the commission has asserted a claim against.

I have before me the result of operations of the several roads for each year, 1920 to 1928, inclusive. Based upon the commission's valuation, as shown on sheet 3, the Prescott & Northwestern Railroad had an actual operating deficit in the year 1920 of \$28,618.30; 1921, \$7,924.61; 1927, \$34,177.74; and in every other year, except 1925, less than the fair return fixed by the commission; while in 1925 it had excess operating income against which the commission is now claiming for the Government \$8,551.06.

In other words, Mr. Chairman and gentlemen of the committee, that is a case where the road had operating deficit of seventy-odd thousand dollars in four years, and it had less than its fair return in the other period, and the two periods added together would make one hundred and fifty-odd thousand dollars of deficits of amounts less than the fair return. In that period there was one year—1925—that the Government is claiming \$8,551.06.

In the case of the Louisiana Southern Railway Co., the road had less than a fair return in the entire period except the year 1925, and based upon the operations of that year the commission is now claiming \$31,093.33.

In the case of the Moscow, Camden & San Augustine Railway Co., there was an actual deficit of \$741.22 in 1920, \$975.92 in 1921, \$1,912.95 in 1927, and less than a fair return in every other year except the year 1923, upon the operations of which the commission is now claiming for the Government an excess of \$5,554.95.

The Nacogdoches & Southeastern Railroad Co. had an operating deficit in each of the following years: 1920, \$4,505.62; 1922, \$39,230.64; 1926, \$11,444.50. In all of the other years, except 1921, it had less than the fair return, and in the year 1921 it had recapturable excess claimed by the commission of \$3,049.29.

The question has been raised in this hearing whether or not the recapturable excess earnings of carriers, which until paid over to the Government must be held as a trust fund, and, after being paid, used as a contingent or revolving fund, can now be released without a violation of the trust.

There is now in the revolving fund, as stated by Commissioner Eastman, \$13,277,598.50; \$10,717,922.97 represents payments to the commission and the remainder represents interest accumulations. Only a negligible amount of this fund has been paid except under protest. As to the amounts which may have been impounded by the carriers and against which the commission is asserting recapture claims, Commissioner Eastman, speaking for the commission, said:

It is impossible to make any accurate estimate of the amount due under the recapture provisions prior to final reports and orders, and even then orders may be upset by the courts. It is only possible to make a very rough estimate, which

must be given with all manner of reservations and to which it would be a mistake to attach much weight. Such an estimate, however, has been prepared covering the period from 1920 to 1930, inclusive. The total is \$378,394,194.

In considering the legal status of the amount recovered into the revolving fund, as well as the amounts claimed but not yet paid, it should be borne in mind that the recapture provisions specifically provide that one-half of the recapturable excess must be placed in a reserve fund, established and maintained by the carrier, and the other one-half must be paid to the commission for the purpose of establishing and maintaining a general railroad contingent fund. The use of both of these funds is restricted by express provisions.

I call attention, first, to the revolving fund. It is specifically provided in paragraph (10) that this fund is to be administered by the commission, either by making loans to carriers to meet expenditures for capital account, or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to the carriers. It is thus plain that the revolving fund can only be used (1) in the way of taking care of expenditures for capital account, or (2) purchasing equipment and transportation facilities and leasing the same to the carriers.

Following this, it is provided that loans can only be made after hearing before the commission and a record made in which it must affirmatively find that the making, in whole or in part, of a proposed loan is necessary to enable the applicant to properly meet the transportation needs of the public, and that the prospective earning power of the applicant, and the character and value of the security offered, are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations, and the commission is required in specific terms to prescribe the security to be furnished, which shall be adequate to secure the loan. In addition to this, all loans must bear interest at the rate of 6 per cent per annum, payable semiannually to the commission.

It has been shown by everyone who has been heard by this committee that the recapture provisions have utterly failed to accomplish the purpose for which they were intended. It has been and must be conceded that such funds as were paid without protest to the commission could not be used contrary to the purposes of the trust, or the specific limitations under which the trust is to be administered. I think a sufficient answer to the question as to whether the money already paid to the commission, or such recapturable funds as may hereafter be found to have been impounded by the carriers, can be released by a repeal *ab initio*, is that the trust has absolutely failed. But I present another view, and that is, assuming that the funds have been or may be impressed with a trust, it is sound in law to say that no other than the beneficiaries of the trust could assert objection to a repeal, which will provide not only for a release of any claims for money not yet paid, but a distribution of the fund already paid ratably to the carriers by whom it was paid.

I call attention to the fact, first, that none of the fund thus far paid has been administered by the commission. No loans have been made to be used for capital account, nor to refund maturing securi-

ties, nor for the purchase of equipment and facilities to be leased to the carriers. The commission has simply invested the fund in Government securities so that it might be augmented by accumulations of interest.

Everybody knows that the principal purpose of Congress in passing the transportation act of 1920 was to provide a national system of transportation, strong in all its parts. It has been so interpreted by the commission and the courts in many decisions. The problem that seemed most difficult was that of the short and weak roads. In the language of Senator Cummins in a speech before the United States Senate, printed in the Congressional Record of December 4, 1919, when the transportation act was being explained, the plan which Congress proposed was—

to take from the larger railroad companies a portion of their excess earnings above 6 per cent and devote them to increasing the facilities in the hands of the companies which are unable to purchase or construct them for themselves.

Senator Cummins in this speech said:

I regard it—

meaning the recapture provision above mentioned—

not only as one of the most vital but most equitable features of the bill.

After the law was passed, the Supreme Court, in the now celebrated Dayton-Goose Creek case (263 U. S. 435), speaking of the recapture provisions, said:

Those who earn more must hold one-half of the excess primarily to preserve their sound economic condition and avoid wasteful expenditures and unwise dividends. Those who earn less are to be given help by credit secured through a fund made up of the other half of the excess. By the recapture clauses Congress is enabled to maintain uniform rates for all shippers and yet keep the net returns of railways, whether strong or weak, to the varying percentages which are fair, respectively, for them. The recapture clauses are thus the key provision of the whole plan.

There may be some difference of opinion as to whether it is absolutely correct to say that the short and/or weak lines are the only beneficiaries to the trust, but if that be asserted, it must be conceded by all that the beneficiaries are the necessitous carriers. No other than carriers that were units in the transportation system and furnished transportation under the body of rates fixed by the commission could have any possible interest in the trust. It follows from this that unless the needy carriers or some of them were here opposing repeal ab initio, there can be no possible reason for not doing so. Speaking for members of the American Short Line Railroad Association, I can and do say that they have long sought to have Congress exempt them from the recapture provisions ab initio. The Chairman and older members of this committee know that in the Sixty-ninth and Seventieth Congresses bills for this purpose were pressed for passage in both Houses by the class 2 and class 3 railroads. I refer to the Pittman-Newton bills, S. 4396 and H. R. 8549.

Short-line railroads in the recapture class, as well as those not so fortunate, all favored and now favor retroactive repeal. To all of them the revolving fund is a delusion. Those that in an occasional twelve months' period, through some extraordinary situation, hap-

pened to earn a recapturable excess, while in other years they had an operating deficit or less than a fair return, have fared but little better than those less fortunate, because such carriers can not use their own part of the excess earned in a fat year to balance or recoup the losses of a lean year. They must use their own excess to set up a reserve, not for equalizing their earning power and thus providing for fluctuations in earnings, but for the purposes specifically limited by paragraph (7) of section 15a, which reads as follows:

For the purpose of paying dividends or interest on its stocks, bonds, or other securities, or rent for leased roads, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net railway operating income for any year is less than a sum equal to 6 per cent of the value of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6); but such fund shall not be drawn upon for any other purpose.

The practical effect of the restrictive provisions to which I have referred is to take away from a carrier the right to use its one-half of the recapturable earnings in such way as would be most compatible with its own situation. For instance, a road that has no bonds or other securities outstanding, or does not owe rental for leased roads, could not use any part of the reserve fund except for the one purpose of paying dividends on its stock, and then only to the extent that its net railway operating income in the particular year is less than 6 per cent of the value of its property as fixed by the commission. It might have outstanding obligations, incurred through wrecks, personal injuries, and so forth, or deficits occasioned by failure of crops, suspension of mines, misfortune of flood and famine, and these obligations might be such as to bring the carrier to the very brink of bankruptcy, yet the reserve created out of its part of the recapturable excess can not be used to avoid such a calamity. Nor could the carrier in such distressed condition get relief from the revolving fund.

While the law was passed declaredly for the purpose of aiding the necessitous lines, the restrictions to which I have pointed so confine the use of the revolving fund as to make it impossible for such a carrier to procure a loan with which it might be able to maintain its property and furnish adequate transportation service, or even to escape bankruptcy. A short or weak road that might qualify for procuring a loan under the provisions of paragraphs (11) and (12) could, with a saving of considerable expense and much more speedily, procure a loan from the public, and, in normal times, at less than 6 per cent. It is plain to be seen, therefore, that the revolving fund is of no possible value to any except roads that are strong enough to acquire loans in the open market.

Now, Mr. Chairman, I just want to say a word with regard to the rate-making section of H. R. 7117. We are in favor of a rate-making section as set forth in H. R. 7117. In principle, we do not favor any change. It is satisfactory, so far as we are concerned. I think, as stated by Colonel Thom yesterday, that the commission should have some policy to guide it in the discharge of its administrative duties. It is a distinct benefit if Congress does that, not only to the railroads, but to the commission, and I think it would prove to be in the public interest, because it will enable the com-



mission to have some sort of guidepost as it goes along the way of an increase or decrease of rates.

In a hearing before the Committee on Interstate Commerce of the United States Senate, Sixty-eighth Congress, on S. 91, S. 1227, S. 1919, and S. 2159, bills for the repeal or amendment of section 15a of the interstate commerce act, as amended April 15, 1924, a report had been circulated by the United States Chamber of Commerce, and a committee appointed. I quote the statement of that committee with regard to this subject as expressing my own views particularly. The report of the committee is, in part, as follows:

A rule of rate making is an essential part of the law for the regulation of railroads. Without a definite and workable rate-making rule, prescribed by the statute, it would be much more difficult for the commission to assume the responsibility of maintaining rates that will cause the railroad industry to be self-supporting. The commission would be constantly subject not only to the attacks that grow out of the administration of the rule, but also those now made upon Congress, and the aggregate burden of these attacks would be more than an administrative tribunal should be subjected to. Congress has, therefore, prescribed a rule and entrusted its execution to the commission.

The committee there was speaking, of course, of the present rule. The CHAIRMAN. Any questions?

Mr. PARKER. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Parker.

Mr. PARKER. Mr. Cain, does your table cover all of the railroads that paid, by years?

Mr. CAIN. Yes; it does.

Mr. PARKER. Does that give a complete list?

Mr. CAIN. The first table that I introduced here shows all carriers.

Mr. PARKER. That is what I mean.

Mr. CAIN. Yes.

Mr. PARKER. It covers the whole field?

Mr. CAIN. Yes.

Mr. PARKER. That is what I wanted. I wanted to check that.

Mr. HOCH. Mr. Chairman.

The CHAIRMAN. Mr. Hoch.

Mr. HOCH. Mr. Chairman, I have before me the table which you, Mr. Cain, have submitted as to the amounts claimed by the commission. I asked a former witness about dividends paid by railroads during prosperous years. I am wondering if you can give me any further information about that. I will take one instance, by way of illustration. On this table, it appears that the largest claim made by the commission on any one carrier is against the Norfolk & Western.

Mr. CAIN. Yes, sir.

Mr. HOCH. Now, it seems that those claims are confined to three years, 1924, 1925, and 1926.

For 1924, the commission claims recapturable excess of \$1,291,000. For 1925, \$5,156,000; for 1926, \$9,402,000; making a total of close to \$16,000,000.

Now, according to the figures of the commission, this railroad had three prosperous years.

Can you tell me anything about the dividends paid by that railroad during those years?

Mr. CAIN. I can only tell you in a general way that the road declared dividends, but I can not tell the amount, Mr. Hoch. That is, I can not tell the amount of the railroad's dividends.

Mr. JONES. We would be glad to put that in the record for you, Mr. Hoch.

Mr. CAIN. We can procure that information for the record. Of course, we do not deal with trunk lines. I only attempted, from the records, to make a complete statement as to the recapture situation.

Mr. HOCH. Of course, what I had in my mind was to show whether, as a matter of fact, the investors in these railroads for these years, for which the commission claims recapturable excesses, have received unusually high dividends. If they have, the investors have had a special benefit during those years, and that is a factor certainly to be taken into consideration by this committee.

Now, this table does not give the percentage at all. It simply gives the amount claimed. I would not want to suggest the compilation of any elaborate table, but I am curious to know what percentage return this is. For instance, take the year 1926, where the commission claims about \$9,500,000 from the Norfolk & Western. Could you tell me what percentage they earned during that year?

Mr. CAIN. Mr. Hoch, I happen to know that the Norfolk & Western is contesting those claims, because they are asserting that they have not been valid, that the road has not been properly valued. That, of course, is based upon a tentative valuation made by the commission.

Mr. HOCH. As I understand, most of these cases, in the matter of valuation, is still a matter of controversy, but my inquiry is based on the assumption that the commission's valuation will be upheld. At least in the table you have furnished here, there is the amount claimed of these carriers.

Mr. CAIN. I could not answer your question as to what percentage that would make.

Mr. HOCH. I have here, which has been furnished to me, a table taken from the Investor's Pocket Manual published by the Financial Press, in which it gives the earnings for the Norfolk & Western, the road about which I was just inquiring, and the percentage runs from about 14 per cent up to something over 25 per cent.

Now, this is not very intelligent, because I do not have an analysis of the figure. I take it that this is earnings upon the stock.

That purports to be earnings upon the stock. Now, what percentage that covers on the valuation I do not know. It would be very interesting to go into that question.

Yes; I have it here now for the years, or just one year that I referred to, 1926. It appears, according to this tabulation, that in 1926 the Norfolk & Western earned 5.71 per cent upon its common stock.

Mr. CAIN. Well, of course, I think it is generally known that the Norfolk & Western is perhaps the most prosperous road in the country now. I think also, it is generally known that the control of that road is in the Pennsylvania. I can not give you the information. I am sorry I can not, but I will be glad to have our statistical force get it up for you, if you want it, and file it later.

Of course, I am anxious to help the committee in any way I can, and for that reason I put a complete picture before you, including the Norfolk & Western.

Mr. BURTNESS. What you want, I take it, is the percentage on valuation, not the percentage of return on the par value of the capital stock, but the percentage on the tentative valuation of the commission.

Mr. HOCH. I think both would be interesting, and I would be glad to have the percentage on the stock, as well as on the valuation.

Mr. CAIN. I will be glad to undertake to get that up for you, Mr. Hoch, if you want it, and supply it later. Of course, I am not prepared to do it now.

Mr. PARKER. The Norfolk & Western pays 10 per cent.

Mr. HOCH. For what year?

Mr. PARKER. That has been their rate for some time.

Mr. HOCH. You mean to say that they paid 10 per cent every year during this whole period?

Mr. PARKER. That has been their rate.

Mr. HOCH. Ten per cent on the stock?

Mr. PARKER. On the stock.

Mr. HOCH. Just as an illustration, it would be interesting to go into that particular case and get at the facts because here is one of the roads that is asking for a return, according to the commission's figures, asking for a return of about \$16,000,000.

Now, I would like to know what relation its capitalization has to the tentative valuations which the commission made. What sort of equitable claim does this particular road have for the return of this money. I think that that would be very interesting.

Mr. CAIN. I will be very glad to furnish you that statement if I can, Mr. Hoch.

Mr. BURTNESS. Is there any representative of that road here?

The CHAIRMAN. The class 1 railroads are represented. The class 1 railroads are represented by Mr. Thom. You represent them, Mr. Thom.

Mr. THOM. Yes, sir.

The CHAIRMAN. Mr. Thom represents them. I think that that is correct, Mr. Thom.

Mr. THOM. Yes.

Mr. CAIN. I was just about to remark, if the committee please, that I have not heard whether or not Colonel Thom has presented his views with regard to the recapture. I assume that when he does present his views that he will be in favor of a repeal from the beginning.

Assuming that he represents the trunk-line carriers, as he does, and we are authorized to speak for the short-line carriers, as I do, I do not know who else could object to a repeal and distribution of these funds, unless there was some road that got a benefit out of proportion to the others.

The CHAIRMAN. Any further questions?

We are very much obliged to you, Mr. Cain.

The House, I understand—I will say this for the information of the committee—the House will adjourn immediately after assembly.

and I thought we might run on until 12 o'clock, if there is no objection.

All right, Mr. Jones.

Mr. JONES. May I briefly say, first, that I want to introduce these gentlemen to the committee, but I want to make the statement that these are the particular cases that I thought would be of interest to the committee in order to show just how this is working out with these lines. I thought that we might get a short statement, not long, from these gentlemen, relating to each particular case. I am sure that their statements will be interesting to this committee.

I want to call first, without taking up any time myself, on Mr. W. L. White, General Manager of the Yosemite Valley Railroad.

#### STATEMENT OF W. L. WHITE, GENERAL MANAGER OF THE YOSEMITE VALLEY RAILROAD

Mr. WHITE. Mr. Chairman and members of the committee, as Mr. Jones has told you, I represent one of the so-called short-line railroads, namely, the Yosemite Valley Railroad, located in California. This road extends 77.7 miles, from Merced to El Portal, Calif., connecting at Merced with the Southern Pacific Railroad, and the Santa Fe Railroad.

The road was built originally to give access to the Yosemite National Park, which prior to the construction of this road was without rail service, necessitating 90 miles of staging.

The country served by this road for the first 24 miles, Merced to Merced Falls, is the fertile San Joaquin Valley, where fruit, hay, grain, and stock are raised. For the remaining distance to El Portal the line follows the Merced River through the rough and rugged Merced River Canyon. At Merced Falls is located the sawmill of the Yosemite Lumber Co., which furnishes approximately 90 per cent of the total freight tonnage handled by this company.

El Portal, the eastern terminus, is the principal entrance to the Yosemite National Park. Considerable tourist travel enters the park at this point. The handling of this tourist travel has produced approximately 90 per cent of the passenger revenue of this company in the past. However, with the recent completion of an improved highway, paralleling our railroad company's line, this passenger business is on the decline, and this source of revenue is seriously threatened.

The road was constructed in 1907, and for the entire period of our operations, from 1907 to 1931, inclusive, the road has never earned sufficient money to pay its fixed interest requirements with the exception of 1916, due to the World's Fair in San Francisco.

The primary object in constructing the road was to give rail access to the Yosemite National Park. Tourist travel, however, to Yosemite failed to come up to expectations, and in order to justify the continued operation of the railroad, it was necessary to secure additional business, which resulted in the establishment of the lumber industry of the Yosemite Lumber Co.

The freight revenue of the company is derived principally from the transportation of forest products. Approximately 92 per cent of

the total number of carloads of freight handled during the calendar year consists of logs, lumber, and other forest products, and it is estimated that the timber in which the lumber company is operating will be entirely cut out in 12 to 15 years from this date, at the present rate of operation.

During the year 1925 the earnings of this company were highly inflated, due to the construction work of the Merced irrigation district, which included the construction of a large dam and power plant at Exchequer, Calif., and the relocation of 17 miles of main-line railroad of this company. The gross revenues of this company were increased from \$662,069 in 1924, to \$1,409,492 in 1925, and to \$851,330 in 1926, this entire increase being attributed to the above-mentioned construction work.

Statement of operating revenues, expenses, and income, which I will submit, shows that the net railway operating income of this company has never been sufficient to meet the interest on first and second mortgage bonds, with the exception of the years, 1916, 1925, 1926.

The enforcement of the recapture clause will result in the bankruptcy of not only this, but practically every short-line railroad in the country, for the reason that the business of the short-line railroads is extremely hazardous and dependent, for the most part, on the transportation of one or two principal commodities, such as lumber, coal, or some other natural resource. This situation makes the volume of business handled subject to the fluctuating market conditions. During the season of business depression, the railroads face a loss, but if unhampered by drastic tax, such as this recapture clause, these losses can be recouped during the good years, and they can continue to exist.

The operation of the recapture clause works a distinct injustice on the Yosemite Valley Railroad Co., and practically amounts to Government confiscation for the following reasons:

The limited life of the lumber operations, which produces, by far the major portion of the freight tonnage of this company. After this tonnage is exhausted the continued operation of this railroad is exceedingly doubtful, and it is manifestly unfair for the Government to tax the railroad company to the extent of one-half of the excess earned over an arbitrary figure, when in all probability the entire capital investment of the company will have to be written off within the next 15 years.

The peak earnings of the years 1925 and 1926 were due to the unusual and temporary conditions which obtained, increasing the net railway operating income to a high point in those years, and if the company is required to pay to the Government one-half of the excess earnings for those particular years, after having operated at a deficit since the beginning of operation, and facing similar unprofitable operations in the future, results in the Government taking the benefit of the prosperous years, and the railroad company standing the entire deficit during the lean years, which is absolutely unfair, and it does not seem that such was the intent of the framers of the law.

It is obvious that the repeal of section 15a must be made retroactive in effect if same is to be of any benefit to short-line railroads,

and the following arguments are advanced in support of this request:

Section 15a has proved to be impracticable and has never operated as the framers anticipated, originally passed as a measure to curb the prosperous lines and assist the less prosperous, the actual effect of this ill-advised legislation has been to penalize the short, and in most cases, weak lines. This result has been brought about by the fact that it is practically impossible for the commission to value for purpose of recapture the large trunk lines, consequently with one or two exceptions, all the recapture proceedings instituted by the commission have been directed against the smaller lines.

Practically all the money that has been paid by the carriers into the recapture fund has come from these small lines, the fund has been of absolutely no value to any line, as not 1 cent has been loaned and, under the provisions of the law, it is extremely doubtful if this fund can ever be utilized.

The Interstate Commerce Commission recommended the repeal effective back to the date of the original passage of section 15a and unless this is done, that body is charged with the necessity of carrying on recapture proceedings for the 12-year period at great expense to the Government and the carriers, with no possible gain to either. Failure to make repeal of this act retroactive will also doubtless result in endless litigation with the carriers affected and the Government.

Now, I might say that our company is one of the companies which has been served with a tentative recapture report by the Interstate Commerce Commission for the period 1920 to 1925, inclusive, in which the commission claims \$175,000 recapturable income.

Mr. BURNETT. Is claim made for each one of those years?

Mr. WHITE. No. 1920 shows a small recapturable earning; 1921 shows none; 1922 shows a small recapturable income; 1923 shows none; 1924 shows none. Practically all of it is in one year, 1925.

Mr. BURNETT. As I recall, your case is one which I think was presented to us when hearings were held on this same matter for the short lines, and as I recall, the statement was made that if the period were extended to 3, or 4, or 5 years, instead of taking it for each year, you would not come within the recapture provisions at all, because your peak years were individual years, and if you had an average for a long enough period, why, there would be no so-called excess.

Mr. WHITE. That is approximately correct. I want to point out also at this time that our company has been operated on a very economical basis. The officers, such as the president, vice president, and secretary treasurer, receive no compensation whatever, and the company has never paid 1 cent dividends on its stock. Our entire efforts have been devoted to earning enough money to pay interest on our first-mortgage bonds, and we have never paid any interest on our second-mortgage bonds, and the deficit now accrued on the second-mortgage bonds for interest totals over \$2,000,000.

Mr. Chairman, I will submit this tabulation.

(The table above referred to is as follows:)



*Statement of operating revenues, expenses, and net railway operating income of the Yosemite Valley Railroad Co., compared with interest requirements and deficit between net railway operating income and interest requirements*

Year	Operating revenue	Operating expenses	Net railway operating income	Interest on first and second mortgage bonds and short-term notes	Deficit
June 30, 1907.....	\$83,497.61	\$9,983.09	\$73,514.52	\$119,375.00	\$45,860.48
June 30, 1908.....	154,706.61	126,850.40	27,856.21	213,915.00	186,058.79
June 30, 1909.....	168,114.37	117,962.80	50,151.57	217,431.88	167,280.31
June 30, 1910.....	238,562.32	131,044.57	107,517.75	218,932.89	111,415.14
June 30, 1911.....	206,137.65	127,185.86	78,951.79	223,830.70	144,878.91
June 30, 1912.....	270,478.84	134,997.91	135,480.93	231,076.52	96,596.59
June 30, 1913.....	278,354.45	143,892.11	134,462.34	240,033.66	106,571.32
June 30, 1914.....	273,879.80	156,575.16	117,304.64	218,578.80	101,274.16
June 30, 1915.....	273,214.83	210,818.48	112,396.35	150,000.00	37,603.65
June 30, 1916.....	429,396.85	192,476.89	236,919.96	150,000.00	86,919.96
Dec. 31, 1916.....	227,658.98	112,112.62	115,546.36	200,000.00	84,453.64
Dec. 31, 1917.....	311,151.88	175,007.20	136,144.68	250,000.00	113,855.32
Dec. 31, 1918.....	221,817.59	159,887.57	61,930.02	250,000.00	188,069.98
Dec. 31, 1919.....	339,014.32	214,491.72	124,522.60	250,000.00	125,477.40
Dec. 31, 1920.....	518,608.89	289,537.04	229,071.85	250,000.00	20,918.15
Dec. 31, 1921.....	638,355.82	407,231.18	231,124.64	250,000.00	18,875.36
Dec. 31, 1922.....	682,797.65	471,512.55	211,285.10	250,000.00	38,714.90
Dec. 31, 1923.....	689,136.69	479,134.99	210,001.70	250,000.00	39,998.30
Dec. 31, 1924.....	662,069.63	438,717.76	223,351.87	250,000.00	26,648.13
Dec. 31, 1925.....	1,409,492.13	826,056.82	468,365.06	250,000.00	218,365.06
Dec. 31, 1926.....	851,330.10	444,189.13	289,310.42	220,750.00	68,560.42
Dec. 31, 1927.....	563,714.82	390,542.23	76,735.22	218,300.00	141,564.78
Dec. 31, 1928.....	362,903.96	334,345.87	30,558.09	215,900.00	245,006.40
Dec. 31, 1929.....	519,901.10	397,732.80	171,238.56	215,900.00	44,661.44
Dec. 31, 1930.....	446,044.72	329,405.39	80,605.00	215,900.00	135,295.00
Dec. 31, 1931.....	222,705.50	244,181.63	75,948.19	215,900.00	291,848.19

Mr. JONES. Mr. Neville, Meridian, Miss.

#### STATEMENT OF S. A. NEVILLE, MERIDIAN, MISS.

Mr. NEVILLE. My name is S. A. Neville, former president and owner of the Jackson & Eastern Railway Co.

With your permission, Mr. Chairman, I would like to file a statement, and just make these additional statements.

In 1906, I was president of the Meridian Chamber of Commerce. Meridian was the largest town in Mississippi. We were only served by one carrier. We saw the necessity of making connections with two trunk lines penetrating our territory. We were unable to get those carriers to give that transportation connection. We undertook, as citizens of that community, to perform that service ourselves. This necessitated the construction of three railroads which we undertook to do. This covers a period of 20 years. Within that time, within the period of that operation, of 20 years, one of those lines that is being served with a notice of recapture of earnings for only 4 years of that period, of \$164,000. The loss on the other two carriers exceeded that amount of recapturable earnings. The effect of the law is that the Government says to us, "We will take your profits and give you your deficits," which I think is manifestly unfair to citizens who have undertaken to perform a service as we have done in this case.

I was compelled to sell the profitable road six years ago. I have been unable to collect the amount due me, because of the uncertainty of the Government's demand on the road.

I am suffering great loss on my last effort, and I can not collect from the road on account of being tied up with the recapture law.

I have appealed to the commission to loan me money out of the funds. They tell me they can not do it.

Now, I am just having to suffer all of the burdens of a loss in operation. I can get no benefit. I can not even collect the profits I made on the profitable operation.

I say to you, gentlemen, that it is manifestly unfair to people that are trying to perform service to their territory and if this law is not repealed, and repealed retroactively, it will mean the bankruptcy of my projects and loss of effort of a lifetime to perform a service for my country.

The CHAIRMAN. Thank you very much, Mr. Neville.

Mr. JONES. You desire that statement to go into the record?

Mr. NEVILLE. Yes; I would like to file this.

The CHAIRMAN. It will go in the record.

(The statement is as follows:)

As president of the Chamber of Commerce of Meridian, Miss., I led a movement to provide additional railroad facilities which were badly needed to open up the territory tributary to Meridian, and after trying unsuccessfully to get existing railroads to extend their lines to Meridian through that territory, because they had an understanding among themselves not to invade each other's territory, I got my back up and undertook to build those railroads myself, with the help of the people of Meridian and of that region who had confidence in me. To make a long story brief, I have had a long uphill fight and have run into more obstacles than anybody would dream could have happened.

So you can understand the situation clearly, however, I should explain that Meridian needed an extension to the east and also one to the west. I started on a western segment first and built the Meridian & Memphis Railroad, of 33 miles, to Union but the old roads at Meridian held me up and I had to incur an unexpected extra cost of over \$100,000 to build overhead over their tracks into Meridian. When I got that far the Gulf, Mobile & Northern agreed to take that road over, but I wasn't in position to hold out for any better deal, so they got it at cost and all my profit was in the satisfaction of having succeeded that far.

Then I went to work to build the next segment as the Jackson & Eastern and got it built by all sorts of ingenuity as far as Sebastapool, 13 miles. By that time the war came on and I couldn't do anything more then.

As soon as possible after the war, I started again and planned an extension of the Jackson & Eastern from Sebastapool to Jackson, 61 miles, to give Meridian a through connection with the lines there. Congress had passed the transportation act in the meantime, however, which made it necessary to get a certificate of public convenience and necessity. I think mine was the first application to the commission under the new law, so I was the dog they vivisected in getting experience and they went mighty slow because it was new work and they "passed the buck" all around the commission to get everybody's ideas before they established any precedent. They kept requiring us to do additional things, and I had to spend over \$10,000 to furnish them with advance plans and specifications by an engineer. That in itself is a very long story and it took me over four years to finally get my certificate through with the strings taken off it.

They first gave me a certificate saying the road was a public convenience and necessity, but that I couldn't issue any bonds or notes for the money it would cost for five years. I took the remainder of the money I had got back when I sold the Meridian & Memphis to the Gulf, Mobile & Northern, with all the other money I could get together myself and what the people would lend me, and did build a good deal of the line toward Jackson, and at least completely satisfied the commission that the road was needed, got the restriction removed and obtained authority to properly finance the road.

All this stretched me out pretty thin, and when they saw I had the way all clear, the Gulf, Mobile & Northern reached out again and took it off my hands at just about cost, like they did the Meridian & Memphis, and they have since

completed the line, hooked it up with the New Orleans Great Northern at Jackson, and have a good new through route between the Lakes and the Gulf. I am out of that picture, but at least I felt vindicated.

Now here is where the shoe pinches me so hard. In taking over the Jackson & Eastern, the Gulf, Mobile & Northern imposed the condition that I should assume any outstanding liabilities, and before we had a final settlement, the commission's examiners came along and spent months analyzing our books, and when they got through, the Gulf, Mobile & Northern said it looked like I owed over \$100,000 for recapture and they are holding back from me that much money. Just the other day, however, the commission notified they would claim \$82,254.17.

There is quite a peculiarity in this situation which I think you ought to also understand. The act gives discretion to the Interstate Commerce Commission when giving a certificate to build, to permit the new line to keep all the excess earnings it could make for 10 years. They gave me that privilege for the new part of the line from Sebastapool to Jackson, 61 miles, but for that part which was built before the war from Union to Sebastapool, 13 miles, they couldn't do so. What happened is that the traffic off the new part of the line all moved over the old part of the line, and according to the way the commission's examiners prorated the earnings and expenses, it made the old part of the line earn all that \$82,254.17 excess.

I am not telling you this to criticize the commission. They may be right, though I hope not. My purpose is to show you what a tough break I have gotten under this recapture clause, and I hope you can excuse the Jackson & Eastern from that liability so I can get my money.

I guess I ought to tell you also, to make the picture complete, that I am still making good on my determination to give Meridian the lines she needs, and I am at work now on a line to the east of Meridian, the Meridian & Bigbee River Railway. I convinced the Interstate Commerce Commission that this line should be built, and largely on my record in the other instances they have given me a certificate for this one. I have it built now 30 miles to connect with the Alabama, Tennessee & Northern at Cromwell, Ala., and am going ahead with the rest of it as fast as I can raise the money. I took the locomotives and rolling stock of the Jackson & Eastern in part payment for that line, and I have made a deal for a little north and south lumber road to help feed the Meridian & Bigbee River, but I am back under the old strain of financing it, and the unexpected holding up of this \$100,000 for recapture liability of the Jackson & Eastern has been a disastrous thing for me, and I hope you will relieve the situation by passing this bill.

The CHAIRMAN. If you gentlemen desire to depart from your manuscripts, and make statements, you may do that, and your manuscripts may go in the record in lieu of the statements.

Mr. JONES. Mr. Chairman, our next witness is Mr. C. Edward Wright.

**STATEMENT OF C. EDWARD WRIGHT, GENERAL MANAGER OF THE CHATTAHOOCHEE VALLEY RAILWAY CO., WEST POINT, GA.**

Mr. WRIGHT. Mr. Chairman, my name is C. Edward Wright, West Point, Ga., and I am general manager of the Chattahoochee Valley Railway Co., a short line with about 45 miles of main line, operating from Standing Rock, Ala., through West Point, Ga., to Bleecker, Ala., and 10 miles running from West Point to a station known as Riverview. The other mileage is simply a matter of connections with the Central of Georgia, at Bleecker, Ala., with the A. W. & C. north of Standing Rock, Ala.

In the period, 10 months of 1920 to 1925, inclusive, the commission called on the Chattahoochee Valley Railway Co. for \$24,013.17 excess earnings. According to their own valuation, our

earnings should have been approximately \$250,000 for that period. We fell short of that for that period by approximately \$70,000.

The cause of the increase or excess if you please, was brought about in 1925 in the erection of a large dam at Bartlett's Ferry, Ala., for which our road handled all of the material. That is the largest increase.

During that period, I believe that the record will show we had one or two years of very small increases. Two years, there showed a deficit. So, you see, in the aggregate, of the 10 months of 1920, and to and including 1925, we are short, just as I said, \$70,000 on our operations, and we feel, gentlemen, that the 15a should be repealed from the date that it was enacted, became a law, and that this money that we have paid in to the Treasury of the Government should be returned to our little road.

The CHAIRMAN. How much have you paid in?

Mr. WRIGHT. We paid in, in actual money, Mr. Chairman, the record will show, approximately \$16,000, as the Government's pro rata proportion. We have been called on since for an additional amount in gross about \$25,000, since 1925.

And just briefly stated that is the fix we are in.

Now, since the erection of the dam, it created power and we have lost about one-third of our handling of coal, which was a large commodity, and during 1922 the State of Alabama built hard-surfaced road paralleling our line, seven and a half miles, and since then, during that year, we had a recapture, and since then we have lost to the trucks all of our less than car load lot business, and about 75 per cent of our cotton business, the total of which amounts to, annual transportation, altogether, amounting to about 112,000 bales a year for the cotton mills located on our line, so you see what we are up against in the matter of this recapture. If we had the money now we could put in some improvements that are sadly needed.

Our little road has no ballast, as our record will show, and we just feel like if we had this about \$40,000 released that we could use it as the management feels proper, and it would certainly help us out considerably.

We see no chance from now on for any recapture.

I thank you, Mr. Chairman.

Mr. BURTNES. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Burtness.

Mr. BURTNES. Of course, if the test period were increased so as to cover the entire period, you would receive the same relief as that which you would from an absolute retroactive repeal?

Mr. WRIGHT. If you pool the earnings during the years, so that the question was left to simply determine whether there had been any excess earnings, so-called, for the entire period, of course, you would not have any, and that would give you the same relief as an absolute retroactive repeal?

Mr. WRIGHT. I think that is true, sir. Since the enactment of the 1920 act, taken as a whole, up to and including December 31, 1931, we show a deficit for the entire period.

Mr. BURTNES. And, if there is no objection, I wish the last witness would answer that question with reference to his case.

Mr. NEVILLE. That would be true, but we strongly ask for the repeal of the law, and not the pooling of the years.

Mr. BURTNES. But, so far as your case is concerned, if it were repealed for the future, and we then provided that up to this time the test period should be the entire period since adoption so the recapture provision should be based on the earnings that you had made during the entire period, it would give the same relief?

Mr. NEVILLE. No; in my case, it would not, for the reason that there are three different corporations, and only one of those railroads were profitable, and the losses of the other two could not be allocated to the profitable one carrier.

Mr. BURTNES. You mean that you did have one profitable property that through that entire period would earn enough to be subject to the recapture provisions?

Mr. NEVILLE. Yes, sir.

Mr. WRIGHT. Thank you.

Mr. JONES. You want to leave that statement?

Mr. WRIGHT. Yes, sir.

(The statement above referred to is as follows:)

Mr. JONES. Mr. Beman.

**STATEMENT OF C. E. BEMAN, SECRETARY, LAURINBURG & SOUTHERN RAILROAD CO.**

Mr. BEMAN. Mr. Chairman, my name is C. E. Beman. I am secretary of the Laurinburg & Southern Railroad Co.

The Laurinburg & Southern Railroad is a short-line railroad 30 miles in length, extending from Johns, N. C., to Raeford, N. C., and is owned entirely by local people.

Representatives of the commission began checking our records in 1924 for alleged recapturable income under the recapture clause of section 15a of the transportation act of 1920, and have been checking our records periodically ever since, until 1930, when we were served with notice during August, 1930, alleging that we had tentative excess earnings of \$48,193.39 for the following years: 1920, \$684.81; 1921, \$23,522.61; 1922, \$13,367.69; 1923, \$9,625.23; and 1926, \$993.05; and requested us to remit to them for one-half of this amount, or \$24,096.69, and set up the remaining one-half in a reserve account, as required by the transportation act.

We have contended all along that we have had no excess earnings, and to defend our rights it has been necessary to employ highly specialized lawyers, engineers, and accountants to prepare data and represent us in the hearings before, and conferences with, the representatives of the commission, which has been exceedingly expensive. All this, in addition to the great amount of extra work that has been required of our small staff. We have no engineering and legal departments, and our accounting department consists of simply one auditor.

It has already cost us not less than \$10,000, and we would very conservatively estimate it has cost the Government twice that amount, making a total up to this time more than the amount involved, and the end of the proceedings are nowhere in sight. The commission still has our case under consideration and the courts have

passed upon practically none of the exceedingly controversial principles involved in these recapture cases.

There is not one single case on record where a single railroad has derived any benefit whatsoever from the rate-making provisions of the transportation act of 1920, as it is a well-known fact that rates must be based on what the traffic will stand and not on the valuation of the railroads. I can also conscientiously state most emphatically that the recapture provisions of section 15a have not benefited the public one single bit, but it has affected them adversely and will continue more so, unless the recapture provisions are repealed retroactively as has been recommended unanimously by the Interstate Commerce Commission.

Should the Government recapture one-half of excess earnings they alleged in our case, during the existing business depression it would take at least our net income for a period of nearly two years and very seriously affect our financial position. Furthermore, we simply can not stand the continuous expense and strain of preparing data and being represented and attending hearings year after year. Hard-surface roads parallel our line from one end to the other, and with the severe competition we are having, with the trucks on the one hand and the Government attempting to recapture our earnings for years in the past on the other, we are simply faced with ruin unless we are granted some relief quickly.

Not only this, but to make the repeal retroactive would save the Government a tremendous amount of money that would be required to check over every railroad in the country to ascertain if each had any recapturable income and prepare data and start proceedings to collect the comparatively small amount involved. In many cases it would be impossible to collect on account of the railroad in question being in bankruptcy. The state of affairs of the Government spending millions of dollars only resulting in ruining the railroads and the public suffering thereby simply can not continue.

I respectfully ask that the recapture provisions be made retroactive to February 28, 1920.

I thank you, Mr. Chairman.

Mr. HOCH. Mr. Chairman.

The CHAIRMAN. Mr. Hoch.

Mr. HOCH. What valuation did the commission place upon your road?

Mr. BEMAN. They have not finished.

Mr. HOCH. They had a tentative valuation.

Mr. BEMAN. Yes; they have it still under consideration.

Mr. HOCH. Well, they fixed some tentative valuation, else you would not have had a claim made upon you.

Mr. BEMAN. That is true. Let me ask our auditor. You see, they put a separate valuation on for each year.

Mr. HOCH. I am just trying to get at it. Was there a very substantial difference between you and the commission as to valuation? You say you were contesting it all of the time. I suppose that was on the matter of valuation. What valuation did you claim for your road?

Mr. BEMAN. Well, I do not recall. You see, they have each year made a different valuation.



Mr. HOCH. I know, but give us the average or give me any one year.

Mr. BEMAN. Well, I do not have the record here. It runs something like \$200,000 or \$300,000.

Mr. HOCH. Something like two or three hundred thousand dollars?

Mr. BEMAN. Yes, sir; I do not recall the figures right before me.

The CHAIRMAN. What is your mileage?

Mr. BEMAN. Mileage?

The CHAIRMAN. Yes.

Mr. BEMAN. Thirty miles.

The CHAIRMAN. And two or three hundred thousand dollars?

Mr. BEMAN. Yes, sir.

Mr. HOCH. You say that is what the commission claimed, two or three hundred thousand dollars, or what you claimed?

Mr. BEMAN. We claimed more than that. I do not have the figures right before me. I can not give you an answer. I do not believe that I can give you that information. But, our valuation, I might say in connection with this, that the commission allowed us a working capital of a thousand dollars. That is one of the figures we contested.

Mr. HOCH. What is your capitalization?

Mr. BEMAN. The capital stock is \$225,000. We have bonds outstanding at \$75,000.

Mr. BURTNES. Just one question. Your case would, of course, be taken care of and you would get the same relief without retroactive repeal if the recapture provision as to the test period were increased to the entire 11-year period?

Mr. BEMAN. Well, we think so, but the expenses have been tremendous, and we have just had to keep on to establish the facts. I do not know.

Mr. BURTNES. In view of what you have said with reference to new competition and reduction of earnings and so on, you do not claim that anyone could assert that you have earned more than 6 per cent over the entire period on the tentative valuation?

Mr. BEMAN. No, sir; I would not think so; but if it is not repealed, the question would have to be constantly gone into; it would be unsettled, in other words.

Mr. BURTNES. I mean, accompanied by repeal for the future.

Mr. BEMAN. Yes, sir.

The CHAIRMAN. We are much obliged to you, Mr. Beman.

Mr. JONES. Mr. Bunney.

The CHAIRMAN. Mr. Jones, how many more witnesses have you?

Mr. JONES. I think just about three, Mr. Chairman.

The CHAIRMAN. All right.

**STATEMENT OF W. H. BUNNEY, VICE PRESIDENT AND GENERAL MANAGER MONTANA, WYOMING & SOUTHERN RAILROAD CO., BELFRY, MONT.**

Mr. BUNNEY. My name is W. H. Bunney. I reside at Belfry, Mont. I am vice president and general manager of the Montana, Wyoming & Southern Railroad Co.

Mr. Chairman and members of the Interstate Commerce Committee the Montana, Wyoming & Southern Railroad Co. is a railroad with

33 miles of track and is located entirely within the State of Montana.

This railroad is vitally interested in the repeal of the recapture clause of section 15a, and every resident of the territory which it serves and through which it runs is also interested.

The carrier which I represent, the Montana, Wyoming & Southern Railroad Co., is an independent carrier. No trunk line is in any way interested in this property, and this property has no financial interest whatever in any of the industries that it serves.

This railroad was constructed among the foothills of the Rocky Mountains in 1905 and 1906 to serve a number of mines in the Bear Creek coal field, I would say, the principal coal field in Montana, and producing a product that is equal to any coal in that entire territory.

Since the construction of the road the valley has become settled, and we are now a prosperous community, with irrigated farms along its line.

Since the date of construction we have ploughed back into the property nearly four hundred thousand dollars in order to make it better and more efficiently serve the public.

During this period there have been times when we have had some net earnings, but practically all of that has been spent in improving the property. There is a small amount of money that has been saved since the date of construction and that money has been put aside and intended as a sinking fund toward the retirement of some of its bonds.

The carrier went through some hard times, as I stated, and was constructed in 1905 and 1906. In 1909 we went through a receivership. From the date of its construction to the present time we have never paid a single cent of dividends.

This railroad is primarily and almost entirely a coal carrier, 95 per cent of its business being coal.

During the past few years, and particularly during the last year, natural gas has become a very strong element in the way of competing with our line. In September there were completed in the State of Montana, two large gas lines, one of them from the cut-back field in northern Montana, a distance of 250 miles, which serves the largest industrial centers of the State, Butte, the largest city; Anaconda, where is located the smelters of the Anaconda Mining Co.; Helena, the capital city of Montana; East Helena, where is located the American Smelting & Refining Co.; and other towns in between.

In the same month there was completed a line approximately 150 miles long from the Dry Creek oil field going westward through Columbus, Livingston, Bozeman, and other towns. These two gas lines alone reach the territory to which the greatest percentage of our coal was carried. Just what would happen from these two lines has been indicated by lines that were built during previous years, one into Miles City, and the reduction in the amount of coal there was almost 100 per cent. A gas line was constructed into Billings, Mont., which is only 60 miles from our coal field, and the reduction in our tonnage to that point was 85 per cent. I said that the completion of the gas lines had an important effect on us. This is indicated by the fact that our net corporation income, which in

1930 was \$64,000, has been reduced to less than nothing in 1931, the actual figures being in the red \$85.64.

We have saved a small amount of money in the past. I do not see any encouragement whatever for the future, and if the money which the Government will probably demand from us as a result and when the investigation is completed of our valuation would equal these savings and there is no chance to replace those savings with any future business that we can see now.

The Montana, Wyoming & Southern Railroad Co. has satisfactorily served the community through which it runs for a number of years, and we hope to continue to do so, but if the recapture act is not repealed, it will be left in a very bad, crippled condition, and will be unable to continue to operate.

I believe that, briefly, tells our story.

The CHAIRMAN. We are much obliged to you, sir.

Mr. JONES. Mr. Wilson.

**STATEMENT OF R. E. LEE WILSON, PRESIDENT OF THE JONESBORO, LAKE CITY & EASTERN RAILROAD CO.**

Mr. WILSON. I am R. E. Lee Wilson, president of the Jonesboro, Lake City & Eastern Railroad Co. This is a line from Jonesboro to Barfield.

The CHAIRMAN. Where is your line located, Mr. Wilson?

Mr. WILSON. Mississippi County, Ark.

The CHAIRMAN. Jonesboro?

Mr. WILSON. It runs from Jonesboro to Barfield; Barfield is on the Mississippi River.

It was 96 miles long. In 1925 it was reduced to 88 miles.

This railroad went through a stretch of country, undeveloped, principally through inundated swamps, no ballast, and no drainage.

To keep the road going I had to contribute to the road \$200,000 and I was under the recapture clause on two years, 1922 and 1923.

They built a hard-surfaced road paralleling our road, and for a distance of 30 miles, and hauling this traffic put us in the recapture, and the Government, for those two years, for 1922 and 1923, and the Government put a valuation on our property of \$1,518,000. We value our property at \$2,000,000. In 1924 I sold the property to the Frisco Railroad for \$1,750,000. Now, do you not think it is unfair and unjust that the Government would come in and appraise the road for \$222,000 less than I sold it for two years before? They appraised it two years after at that much less, as they claim.

The CHAIRMAN. Would that take you out of the recapture, Mr. Wilson?

Mr. WILSON. Yes, sir; that would take us out of recapture.

They claim for us, the Government has now, in their hands and in escrow, in the Mercantile & Commerce Trust Co. in St. Louis, \$57,000.

The CHAIRMAN. They are holding that out of the money that the Frisco is supposed to pay to your railroad?

Mr. WILSON. The Government has got \$29,000 in escrow, in the Mercantile & Commerce Trust Co. of St. Louis, under the Government, has the rest. It had to pay this in in order to settle, put it

in escrow, and pay it to the Government, together, in order to get a settlement from the Frisco Railroad.

And, remember that we never paid a dollar to the stockholders for a dividend; we never made anything except for those two years.

And, we think it is unfair and unjust that they would come in and claim this excess profit for those two years, and we are appealing to you, gentlemen, to repeal section 15a of the recapture clause in full, retroactively.

The CHAIRMAN. You were here about two years ago, were you not, Mr. Wilson?

Mr. WILSON. Yes, sir.

The CHAIRMAN. Thank you, very much.

Mr. JONES. Will you leave that statement, Mr. Wilson?

Mr. WILSON. Yes, sir.

(The statement referred to is as follows:)

**JONESBORO, LAKE CITY & EASTERN RAILROAD CO.**

The commission claims that the recapturable excess due from the Jonesboro, Lake City & Eastern is \$57,722.28, which claim, however, is contested by the carrier which denies that anything is due.

The Jonesboro was a weak short-line railroad which was 96 miles in length in 1920, but had been reduced to 88 miles in length in 1925. It was located wholly within the State of Arkansas and extended from Jonesboro to Barfield.

This railroad ran through a stretch of country that was wholly undeveloped, principally through inundated swamp lands. When the swamps were drained and the timber cut off the cultivation of cotton came in, and in all that development work Mr. R. E. Lee Wilson, of Wilson, Ark., was a leader in the drainage work, in the cutting off of the timber, and in developing the farm lands.

Mr. Wilson was the principal owner of the Jonesboro, and for many years the road was operated at a loss. He put up over \$200,000 of his own money to keep this road running until 1922 and 1923. Stockholders were never paid any dividends except for the two years 1922 and 1923, and we do not think it is right to take away from the former stockholders of this road about \$57,700 which was earned because of the building of a highway which would compete with and take business away from the railroad when completed.

In the years 1922 and 1923, the only two years in which the commission claims that the Jonesboro was subject to recapture, the railroad hauled large quantities of material to build a concrete highway paralleling the Jonesboro, Lake City & Eastern Railroad for about 30 miles and to build another highway for a distance of 48 miles through the county along the Mississippi River. The revenues from this road material put this carrier in the recapture class for just those two years.

In 1925 the road was sold to the Frisco, but the Frisco has no interest or liability in this recapture claim, for the reason that when the road was bought from the former stockholders they were required to assume all recapture liability. The purchase price was \$1,750,000, but all indebtedness or and claims against the carrier were to be liquidated out of the purchase money. This indebtedness, except for claims and potential claims of the United States Government, including recapture, totaled approximately \$1,518,000. Of the balance, \$42,450 was paid to the commission and \$29,300 was deposited in escrow to cover any possible additional liability. The net result of the sale was the making available of funds with which to discharge the carrier's indebtedness, and with little left for the stockholders.

In passing it may be of interest to know that one of the peculiar features of this claim is that the road was actually sold for \$1,750,000, with the approval of the Interstate Commerce Commission as to price and other terms and conditions of the sale, and the commission also authorized the Frisco to issue bonds in the amount of \$1,750,000 to consummate this purchase. Yet the commission, although making no final value for the year 1925, claims that the road was worth but \$1,530,000 for recapture purposes in 1924, and the net additions to the property in 1925 were but \$18,000.

The former stockholders feel that it is very unfair and unjust to take this money away from them and they feel they should not be compelled to spend

considerable money and lose a lot of time litigating over the several legal questions that are involved in this case, so they hope that their difficulty will be solved by repeal of the recapture law retroactively from the beginning.

Mr. JONES. Now, Mr. Chairman, I want to express my personal thanks, and the thanks of the representatives of the short lines, to this committee for extending the time of this hearing.

That is all of the witnesses that we have, and may I now ask the privilege of introducing a resolution from the board of directors of the National Lumber Manufacturers Association, dated January 25, 1932?

The CHAIRMAN. That may go in the record.  
(The resolution is as follows:)

RESOLUTION OF THE BOARD OF DIRECTORS OF THE NATIONAL LUMBER MANUFACTURERS ASSOCIATION

JANUARY 25, 1932.

The National Lumber Manufacturers Association, representing the lumber industry of the United States in all regions, favors the repeal of the so-called recapture clause of the transportation act and urges that Congress promptly take such action, the same to be retroactive to the effective date of the transportation act.

I also have a statement here of Mr. Theo. L. Wilson, of Clarion, Pa., general counsel for the Lake Erie, Franklin & Clarion Railroad Co., of Franklin, Pa.

STATEMENT OF THEO. L. WILSON, OF CLARION, PA., GENERAL COUNSEL FOR THE LAKE ERIE, FRANKLIN & CLARION RAILROAD CO., OF FRANKLIN, PA.

Mr. Chairman and Gentlemen, I am general counsel for the Lake Erie, Franklin & Clarion Railroad Co., a Pennsylvania corporation, having its principal office at Franklin, Pa.

I will give you a brief history and statement of the effect of the recapture clause in the interstate commerce act of Congress in relation to the Lake Erie, Franklin & Clarion Railroad Co.

Clarion is the county seat of Clarion County, Pa., and for many years up to the year 1897 was served by the Baltimore & Ohio Railroad. In the year 1897 the railroad bridge across the Clarion River was condemned and the Baltimore & Ohio Railroad Co. desired the town of Clarion to contribute \$25,000 toward the rebuilding of the bridge and said if this was not done, the railroad would end its operations on the west side of the Clarion River and leave the railroad terminal about 2½ miles from the town of Clarion, access to which would have to be made over mountainous unpaved roads. We thought they were bluffing, but they were not. The town refused to raise the money and the railroad service into Clarion was discontinued.

A short time after this situation arose the covered timber wagon bridge across the Clarion River was destroyed by a windstorm and everything had to cross the Clarion River by a small ferryboat. This situation existed from the latter part of the year 1897 until the year 1904 and seriously affected business conditions and real estate values in Clarion. This situation gradually became so bad that in the year 1904 the residents of the town of Clarion raised a bonus fund of \$50,000 cash to be given to anyone who would build and operate a railroad into the town of Clarion. The Marvin Rulofson Co. of Millcreek, Pa., which was without railroad facilities, donated \$15,000 to this fund in return for the building of a railroad branch from Strattonville, Pa., to their lumber operation at Millcreek, Pa., and from other sources approximately the sum of \$10,000 was raised, and the builders of a short-line railroad, about 15½ miles in length, from Clarion, Pa., to Summerville, Jefferson County, Pa., there connecting with the Pennsylvania Railroad, received the said bonus of about \$75,000 toward the construction of the road and this road was completed on or about the year 1904. Later a short branch railroad was constructed connecting this railroad also with the New York Central Railroad

Co.'s tracks, and was the beginning of the present short-line railroad known as the Lake Erie, Franklin & Clarion Railroad Co., which now operates about 25 miles of main and branch lines and now serves numerous soft coal mines and other valuable industries, and in that connection I wish to say that at one time this railroad operated passenger service over about 60 miles of the New York Central lines, serving a large community which was without railroad passenger service and without improved roads, but at a later date the establishment of competing bus lines put the railroad out of the passenger business on that branch.

During its existence and previous to the passage of the transportation act of 1920, the railroad system, known as the Lake Erie, Franklin & Clarion Railroad Co., legally issued \$1,000,000 par value 5 per cent bonds and \$1,000,000 of common stock. These bonds of the railroad company lawfully, and for valuable consideration, passed practically all into the hands of banks, insurance companies, and trust estates, and the full issue remains unpaid and are outstanding, except \$50,000 retired by the sale of equipment not needed. In addition to the said bond issue remaining unpaid of \$950,000, by reason of fluctuation in the volume of business of the said railroad company and for the purposes of paying unearned bond interest and making necessary improvements, an additional indebtedness exists at this time amounting to \$94,000.

For the purpose of showing the evil effect of the recapture clause (section 15a in the interstate commerce act) upon the Lake Erie, Franklin & Clarion Railroad Co., I respectfully submit the following statement:

From the year 1920 to the year 1926, inclusive, the net railway operating income was \$524,641 and under the conditions existing during that period the so-called 6 per cent return would be only \$409,666, leaving \$114,975, 50 per cent of which would be recoverable by the Interstate Commerce Commission and the other 50 per cent thereof must be held in trust to be expended as authorized by the Interstate Commerce Commission, and after the payment of interest on our legal indebtedness over said period of years, we do not have one cent of that amount to be paid to the Interstate Commerce Commission or to put in said trust fund. In the said period from 1920 to 1926 our legal interest charges were \$431,649, or \$26,983 more than we would be allowed to retain under the present so-called 6 per cent return, and this interest was due and payable on bona fide securities outstanding for proper value before the passage of the transportation act.

The Government gave our railroad, as of the year 1917, a valuation of \$682,564, which valuation was protested and the Government's second valuation gave us an average value during the recapture years of about \$900,000, while a competent engineer employed by the railroad company gave the railroad a physical valuation as a going concern of \$1,600,000, and the manner in which he arrived at this valuation is fully set forth in a hearing held before the Interstate Commerce Commission at Washington, D. C., on July 6, 1931, which valuation given by him was the average valuation during the recapture years.

Under the recapture clause the Government now claims from our railroad the sum of \$72,335.99, but it is interesting to note that during this recapture period the railroad had very substantial losses during three years of the recapture period, which would considerably offset this claim if it were allowed.

I further desire to inform you that during the said period of years from the completion of the road until the present time, no dividends were paid on the stock, no excessive or unusual salaries paid and no unusual or unnecessary expenses incurred. We have been particularly fortunate in the matter of wrecks, as we have not had a disastrous wreck of any kind and have had no passenger accidents of any kind, particularly, to contend with.

It also will be noted that on the last average valuation given us by the Government, it would be barely possible for us to earn our bond interest, but no amount above that could be earned on this valuation to establish a sinking fund for the retirement of the bonds, or to provide a fund for taking care of the bond interest during the poor business years when we could not earn bond interest.

Another situation which I believe to be typical of most short-line railroads should be called to your attention—and that is about the year 1912 when Gen. Charles Miller of Franklin, Pa., acquired control of the railroad—the principal tonnage sources were three small coal mines and the lumber business from the Marvin Rulofson Lumber Co., hereinbefore mentioned. The lumber company had almost completed its lumber cut and that tonnage would soon totally disappear, and the crying need for the railroad at that time was additional ton-



nage. Consequently, General Miller, being the controlling stockholder of the company and a substantial holder of its bonds, spent approximately the sum of \$750,000 in the purchase of coal lands and the opening and developing of mines therein, for no other purpose than to promote tonnage for the railroad, and it was the business received from this expenditure of his which very substantially (50 per cent) brought the railroad in the recapture clause and to-day his investment of that large amount of money is worth practically nothing and was unprofitable to anyone during the years of its operation, except to the railroad for tonnage.

I wish to further inform you that the bond issue hereinbefore referred to consists of 5 per cent bonds, par value 100, and they were sold at 90, without, any commission to anyone, and at the time they were placed on the market 90 was a very fair value for them.

Respectfully submitted.

THEO. L. WILSON.

Mr. JONES. I also have a letter here from the San Luis Central Railroad Co., signed by Mr. George McLean, president, dated January 29, 1932.

The CHAIRMAN. That may go into the record.  
(The letter above referred to is as follows:)

THE SAN LUIS CENTRAL RAILROAD CO.,  
January 29, 1932.

Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.

#### REPEAL OF RECAPTURE PROVISIONS OF SECTION 15-A

GENTLEMEN: I regret that it is impossible for me to attend this hearing, and have requested Mr. Bird Robinson, President of the American Short Line Railroad Association, to present this letter expressing my views of the necessity of repealing the recapture provisions of section 15a of the transportation act of 1920.

At the hearing before the committee of the Seventieth Congress (H. R. 8549), January 17 and 18, 1928, Mr. A. T. Young, vice president and general manager of this company at that time, expressed our views. You are familiar with the recommendations in the annual reports of the Interstate Commerce Commission, and the Hon. Joseph B. Eastman, under date of January 19, 1932, has given you full details in connection with the application of the act, and, to me, a most convincing argument as to the necessity of repealing the recapture clause and refunding all of the money that has been collected.

To substantiate many of the predictions before and after the act became a law as a part of the Transportation Act of 1920, I will give you the effect of its operation in connection with this company. The San Luis Central Railroad Co. is located in the San Luis Valley, a potato-raising district extending from the junction of the Denver & Rio Grande Western Railroad Co. to Center, Colo., a distance of 12.21 miles, with trackage rights over the Denver & Rio Grande Western Railroad Co. to Monte Vista, Colo., about 3 miles.

Bonded indebtedness, interest at 6 per cent..... \$120,000  
In treasury—can be used as collateral..... 15,000

Outstanding..... 105,000  
Capital stock..... 75,600  
Steam locomotive..... 1  
Freight cars in Interstate Commerce Commission traffic..... None.

About 90 per cent of revenues are received from shipments of potatoes. Shipments commenced September 1, 1913.

The road was constructed originally to encourage the raising of sugar beets to supply a factory erected near Monte Vista, Colo. Sufficient quantity of beets could not be procured and the factory was unable to operate, leaving the railroad in a precarious situation.

It had been demonstrated that a variety of potato known as the Brown Beauty could be grown to advantage, and in order to save the investment in the railroad, we devoted all our efforts to encourage the raising of this

variety of potato, with the result that for the following crop years our shipments were as follows:

Cars	Cars
1913..... 245	1922..... 1712
1914..... 361	1923..... 1696
1915..... 456	1924..... 1498
1916..... 624	1925..... 2453
1917..... 938	1926..... 3388
1918..... 1341	1927..... 5386
1919..... 1355	1928..... 3046
1920..... 1417	1929..... 4688
1921..... 2169	1930..... 4693

The crop year for 1931 will, from present indications, not be more than 1,050 cars, the decrease being due to drought, extremely hot weather, and constantly increasing truck transportation.

The growers of the 1931 crop have received from 45 to 50 cents per 100 pounds, as compared with about 90 to 95 cents for the 1930 crop. I beg to submit this as an illustration of the effect upon the revenues of a short-line railroad depending upon seasonal agricultural products for its revenues. The effect upon the community is very clearly shown from the attached clipping from a paper dated January 26, 1932, published in Monte Vista, Colo., adjacent to our railroad.

When the act became a law, the fact of a world-wide depression, such as we are going through, was not considered possible. Nevertheless, crop failures have always existed and always will, and a law that does not take into consideration the lean years as well as the prosperous years, and allows the Government to take what is said to be an excess revenue from a few corporations that have legitimately earned it, and may require it in order to give adequate service to its patrons, is unjust.

This company has been notified that the Interstate Commerce Commission, under Finance Docket No. 3919, has made a tentative determination of its excess income for the period March 1 to December 31, 1920, and the years 1921 to 1927, inclusive, in which it claims for:

Period	Excess net railway operating income	Recapturable excess income
1925.....	\$1,018.46	\$509.23
1926.....	12,249.17	6,124.59
1927.....	35,378.21	17,689.11
Total.....	48,645.84	24,322.93

The methods of the commission in obtaining this result is being contested by us. It has necessitated the employment of engineering experts and competent attorneys, in addition to an enormous amount of extra work required in our office to furnish required information. It has been necessary for us to expend money for traveling expenses to Washington in connection with the case, to say nothing about the expense of the commission's various examination of our accounts and property.

Should it be finally determined by the courts that we are compelled to abide by the requirements of the recapture law, and that the same methods would be applied to the years 1928, 1929, and 1930, it would mean confiscation of our property. We do not have the cash to pay, and we could not borrow it under any condition. As shown above, we have only \$15,000 bonds in the treasury, and, due to the conditions in our district, as shown by the paper clipping attached, and the possibility of another crop failure, it is a question whether the banks would accept our collateral for any amount.

We have maintained the property to accommodate our patrons in the best manner possible. The revenues have not been obtained by excessive rates. We receive a proportion of 5 cents per 100 pounds on potatoes, which is mainly absorbed by all lines interested in the shipments, the rates from points on our

line to principal destinations being the same as from adjacent stations in the valley on our connecting line.

We have built up our business by close application to the needs of our patrons, offered prizes for seed potatoes, and furnished cars on the shortest notice; in fact, we have rendered every accommodation possible.

In view of the fact that the Interstate Commerce Commission on more than one occasion has urged the repeal of the recapture provisions of section 15a of the transportation act of 1920, and the unfairness of it has also been made manifest by the commission as well as some of the leading financiers of the country, we urgently request that you recommend to Congress its repeal with the provision that it be made retroactive at the earliest possible date, and thereby render the railroads relief from the burden which this section imposes.

Very respectfully submitted,

GEORGE MCLEAN, President.

Mr. JONES. Now, I also say for the benefit of the chairman and those of the committee who are here that, if it is permissible, we desire to put in the record the appearances of these men who are representing these various railroads.

The CHAIRMAN. Enter their appearance in the record. That will be perfectly all right.

Mr. JONES. I can either read them to the committee or see that the clerk gets them.

The CHAIRMAN. See that the clerk gets them.

Mr. JONES. These men are here and have handed me personally their cards. They have come from all over the United States to attend this hearing, and they are certainly interested in this piece of legislation, and I think that will close it so far as the short-line railroad end of it is concerned.

#### STATEMENT OF MOULTRIE HITT, WASHINGTON, D. C.

Mr. HITT. Mr. Chairman, I represent quite a number of short lines, and here are a number of briefs that we have prepared on the recapture provision. These are just a few of the cases.

The CHAIRMAN. You do not want us to print those briefs?

Mr. HITT. No; I do not propose that those go in the record. I merely want to say that they are here for the information of the committee, if they desire to see them.

I also have some prepared statements here that I would like to put in the record, if I may have permission to do so.

The CHAIRMAN. Yes.

(The statements above referred to are as follows:)

#### GULF & SABINE RIVER RAILROAD CO., FULLERTON, LA.

The Gulf & Sabine River Railway Co. was a small line located in Vernon Parish, La., and built in 1908, incorporated as a common carrier with the object in view of distributing forest products and also to serve the public of Fullerton, La., which is the principal town, and the merchants and other shippers attracted thereto and thereby, being a public necessity to serve all these various interests. In 1919 the public so served was approximately 4,000. Its trunk-line connections are the Southern Pacific and the Santa Fe, located at Nipton, La.

At the time this road was built the expectation of service life was unlimited, but the largest tract of contiguous timber to mills located on its line those mills unexpectedly failed to acquire, and it was bought by interests which built their own road. Hence this timber could not move over the Gulf & Sabine

River's line, and from the time of this failure in 1919 to acquire this timber the days of its service life were numbered, as it was impractical to build further without this very large tract of timber. It has since been abandoned.

Aside from the years 1920, 1921, and 1922, the Gulf & Sabine River Railroad had a net annual loss. In these years its earnings, according to the commission's computation, were approximately \$60,000 in excess of 6 per cent, and under paragraph 6 of section 15a it would theoretically be required to pay one-half of this amount to the Interstate Commerce Commission, and what would be left would not pay interest charges for the three years. During all of the years that the road lost money it had to pocket such loss, and it is not fair, therefore, that for the few years when it was fortunate enough to earn a little, that it should be required to surrender a portion of it to the Federal Government, and particularly is this true in view of the fact that the road has now been abandoned and will never have an opportunity to receive from the Government any of the benefits which it was believed by Congress would accrue to the short and weak carriers under section 15a.

This road should have had the right to retain revenue which it earned as the result of common-carrier service performed, and to be thereby partly reimbursed for the cost of performing that service during the many losing years of its operation.

#### BIRMINGHAM & SOUTHEASTERN RAILWAY CO.

My name is Roberts Blount, of Tallahassee, Ala., and I am vice president and operating officer of the Birmingham & Southeastern Railway Co.

Our little road is in Alabama and extends from Union Springs, Ala., to Electric, a distance of about 47 miles, and the Interstate Commerce Commission claims we are liable for \$90,000 recapture in 1925, 1926, and 1927.

My father devoted the best years of his life to the creation of a line between the coal fields of Alabama down through Alabama and Florida to the Gulf coast, but he encountered many vicissitudes and the present line is as much of his dream as he was able to complete.

In its incomplete state it has had a hard struggle and when this act was passed in 1920 it was one of those roads which hoped to benefit by the recapture law, but certainly was not regarded as one which was likely to contribute anything to the recapture fund.

Just prior to the years in which it is claimed there is recapture liability the road was in friendly receivership, but in 1924 the Alabama Power Co. undertook to develop three water-power projects on the Tallapoosa River in the vicinity of our line, and it was the revenue we earned from that traffic which made us look like a recapture proposition, but that was nonrecurring traffic and when that flush time was over we lapsed back into our former poverty stricken condition and that is where we are now.

We are in a dispute with the commission both as to value and as to our true earnings. Their Bureau of Valuation puts our value at about \$1,000,000, while we claim about \$2,000,000. Naturally we claim everything we legitimately can and if our claims are sustained we would not be liable for recapture, but it isn't likely we will win on all points, certainly not from the commission as against its own Bureau of Valuation.

But laying aside the dispute over value, we have shown the commission, we think, on a proper allocation of earnings and expenses we would not be subject to recapture even on a valuation of \$1,000,000. There are several disputes involved, but the principal one arises out of the fact that after the Alabama Power Co. built and operated its own private railroad to come over and get the freight at our stations, instead of using trucks, they made a contract with us to do their private railroad work for an agreed compensation because we could do it for them cheaper than they could do it for themselves.

We made a good thing out of operating their private railroad for them, which we contend was not revenue derived from common carrier operation at all. The commission has not passed on our contention as yet, but if it should be allowed there would probably be no recapture liability at all.

It seems too bad to put a financial weakening like our little line to so much expense to defend itself against a recapture claim like this one, which if insisted upon and enforced would probably confiscate our little railroad, and we hope such a foolish law will be repealed.

ROSCOE, SNYDER &amp; PACIFIC RAILWAY CO.

My name is Ed. S. Hughes, and my principal business address is Abilene, Tex. I am president of the Roscoe, Snyder & Pacific Railway Co., which is a short line running from Roscoe Tex., to Fluvanna, a distance of 50 miles; and this is one road which the commission claims is subject to recapture for every year from 1920 to 1927.

Our road had a deficit for a long time. Mr. Wooten and I acted as indorsers for its obligations for about \$350,000 before we could see any daylight. We "sweated blood" working it out, and the commission has found a tentative valuation for our property of just a little over \$600,000, while we claim nearly three times that value. On the commission's figures of \$600,000 that gives us opportunity to earn only \$36,000 a year for a 50-mile line before we get into the recapture class; and although we are one of the comparatively few short lines that are fairly prosperous, yet I think that our circumstances are perhaps a good illustration of the unfairness of taking away from us our extra earnings now, while our condition at any time may shift from that of earning a profit to that of suffering a loss.

If you will pardon a little personal history, I might say that as a boy of 19 I left my home in North Carolina and went to west Texas, where I started a small hardware store and had quite a struggle to balance a very modest and economical personal budget in my efforts to get on a saving basis. Gradually I had some success and finally built up quite a good business in which I have always felt considerable pride. I also took part in the civic activities of the community and an interest in the development of that section of west Texas.

There was a fine territory lying to the west of us, the real importance of which I do not believe any of us fully appreciated, but we felt that it would help our community and the business generally if we could build a line in a northwesterly direction, and, finally, with some associates, I undertook it. I found out afterwards that the Santa Fe and the Texas & Pacific had had their eyes on that same territory for a long time, but that there was a sort of armed truce between them so that neither one felt at liberty to go ahead with an extension, as the other fellow knew that if it was once started there was going to be a battle royal. We did not know of this tactical situation, and, as I said, I undertook, with the valor of ignorance, to build this road, and later my friend, Mr. Wooten, joined me in my enterprise.

A big business was handled from Snyder and Fluvanna by wagons out to the plains towns until the Santa Fe constructed their line from the north to Sweetwater, in 1911 and 1912, and paralleled the Roscoe, Snyder & Pacific Railway for practically the entire 50 miles, because they thought the truce had been broken.

Since then the Santa Fe has built some 500 miles of railroad in the same region to which we were headed, and it is having a very wonderful development. At the time our construction began the entire territory was very thinly settled, being ranches and with very little farming. Now there are very few ranches and almost all of the territory has been divided into farms and is thickly settled, having a large population. As you can readily see, however, when the Santa Fe paralleled our line we were just about ruined, as there was not enough local traffic for two railroads, and naturally a little 50-mile road does not have much chance when it goes up against a big transcontinental competitor.

I spent several years practically to the exclusion of all of my other business trying to save the situation because I had put my personal credit in the enterprise, as did Mr. Wooten, and our financial lives were at stake. Finally I did succeed in convincing the Santa Fe people that they had made a mistake in thinking that our line was a "cat's-paw" for the Texas & Pacific, but that we had started into that territory as a local enterprise, and President Ripley finally said that he would be glad to cooperate with us and made amends as far as he could consistently with due consideration to the interests of his own road.

Accordingly, routes were opened in connection with the Roscoe, Snyder & Pacific that afforded an opportunity for through traffic routing. This arrangement was made effective, and for 13 years we have solicited transcontinental traffic to and from California as well as to and from defined territory to Texas & Pacific points. The big lines do not help us get any routing, but protect some when we secure it.

We have, by extensive and intensive solicitation, and by prompt, dependable service and by notifying the shippers of their car movements, succeeded in getting enough through business to enable us to make a little money on our investment, but you can readily appreciate our difficulties in establishing sufficient

stability on this basis to make our line financially independent and to make the marketing of securities possible on any basis other than a confiscatory one.

The towns in our territory are very loyal to us, and while they are splendid little towns, their business is subject to the vicissitudes of crops and crop prices and their business would not be sufficient to meet operating expenses and solve financial problems. Hence only from the profits of operation can we look for interest on investment, realization of capital investment, and funds for additions, betterments, and extensions.

The Interstate Commerce Commission has granted us authority for construction of new lines on the plains which will give additional direct routes to Fort Worth and Dallas, and the prospects are that when completed our intermediate traffic will be divided with the lines furnishing this service.

Mr. Wooten and I still have our personal credit up in the railroad, and, as you gentlemen doubtless know, bankers will take no interest in a little railroad nowadays and especially one which might suffer distressingly at any moment by a change of policy and new construction. We feel that we ought to have all the opportunity possible to make what we can now and not have some of it taken away from us because of a principle which was adopted with the big roads in mind and evidently not aimed at a situation like ours.

I have not been able in my 20 years' connection with short-line financing construction and operation to establish any financial connection, outlet, or credit for the securities of short-line railroads without the personal guaranty and indorsement of the owners, and such credit as has been established has been confined to short-term bank loans subject to frequent renewals. Hence since short lines as a class have no market for securities and no financing possibilities available for realizing on same along the plans and methods by which big lines are owned and financed, it seems a great injustice to restrict them to the same rules; in fact, to govern them entirely along the same line is not founded on any sound business principles or business experience that I have knowledge of.

CENTRAL WEST VIRGINIA &amp; SOUTHERN RAILROAD CO.

My name is A. S. Lindsey, and my address is Hendricks, W. Va. I am general manager of the Central West Virginia & Southern Railroad Co., a short-line railroad about 21 miles in length, located in the State of West Virginia and extending from a connection with the Western Maryland Railway at Hendricks to Harmon.

The road was originally constructed in 1894 for the purpose of getting out timber and in 1920 its line extended from Hendricks, W. Va., to Armentrout, W. Va., a distance of 29½ miles. By February, 1929, all of the available timber in the territory having been cut out, this carrier sought authority to abandon its line. A certificate permitting abandonment was granted in July, 1929, and the carrier ceased operation in November of the same year. It abandoned a little over 8 miles between Harmon and Armentrout, but the need for the carrier's services was so great along the rest of its line that it resumed operations and is again rendering an essential transportation service to that territory between Harmon and Hendricks.

The commission has demanded the payment of \$37,560.06 as recapturable excess net railway operating income for the last four months of 1920, the year 1921, and the year 1922, in a proceeding involving value and income for the entire period of September 1, 1920, to December 31, 1927. According to the commission's computation of value and net railway operating income, this little railroad fell considerably short of earning 6 per cent of the value of its property in the last four months of 1920 and the years 1921 to 1927, inclusive; 1921 was its peak year and its net income dropped rapidly thereafter until in 1927 it was but \$2,500.

Although the commission's bureau of accounts long ago determined our net railway operating income for the years 1920, 1921, and 1922 according to the express language of section 15a of the act and the commission's own classification of accounting, which determination would have resulted in our having to pay nothing as excess net railway operating income, we were on the 22d of January, 1931, notified that our little road was subject to the recapture of over \$37,000 for those three years. The new computation is admittedly contrary to the express language of section 15a, but the commission says that the act did



not mean what it says and they now recompute our net income on a different basis so as to indicate a liability of over \$37,000.

It seems that the act provides that receipts and disbursements for car hire shall enter into the computation of net income. Our road leased a considerable number of cars from a car company at the rate of 25 cents per day while they were actually on our line, and when off our line, as they were most of the time, the dollar per day which we received from other lines was turned over in its entirety to the car company. This was in lieu of our having to maintain the cars. Car maintenance is, of course, an operating expense which enters into the computation of net income, but the commission now wants to eliminate from the computation of net income all of the money, including the dollar per day received from foreign lines, which we paid over to the car company, although it is a charge in lieu of the maintenance expenses and depreciation on those cars which we would be entitled to deduct as an operating expense if we owned them.

This the commission is attempting to do although the act specifically says that car receipts and disbursements for car rentals shall both enter into the computation of net income.

The commission now also proposes to eliminate all charges for amortization which the bureau of accounts approved some years ago.

It was early apparent that the life of our road was limited to the period during which timber could be cut and shipped and that when the timber was gone our road would probably have to be torn up. We estimated when that time would be and asked and received permission of the bureau of accounts to amortize our road down to the value of scrap as of the estimated date of abandonment. We did actually get authority to abandon and did cease operations in 1923, but people had gone in there, had built their homes and developed their business, and when the road was abandoned they were extremely hard hit. For that reason we have resumed operation on a part of our line, more in the nature of an experiment to see if we can not keep that part of the road running for the benefit of the people in there who must have it in order to save their life's accumulation.

In the meantime we have relied upon the computation of our net income by the bureau of accounts indicating no recapturable liability and we have had to use all of our money to keep the road in operation. We have not got the money which the commission is claiming and our credit is not good enough to borrow that amount. If we have to pay it, it might force us to abandon our attempt to keep this road in operation for the benefit of the communities it serves or perhaps ask the new Reconstruction Finance Corporation to loan us enough to satisfy the demands of the commission.

We believe that the recapture provisions as the commission is attempting to apply them to us are highly unfair and that the recapture act should be repealed from the time it first became effective.

I also want to add that the excess claimed for the limited time was due wholly to the outboard movement of machinery and utensils from the dismantled mills which had ceased operation.

#### STATEMENT OF HENRY S. FLEMING, PRESIDENT LOUISIANA SOUTHERN RAILWAY CO.

My name is Henry S. Fleming. I am president of the Louisiana Southern Railway Co., a short line, operating from New Orleans 50 miles down the Mississippi River to Bohemia, with a branch from the main line 15 miles to Lake Borgne.

The first predecessor company was chartered in 1834. Fifteen miles was constructed in 1837 from the Mississippi River to Lake Borgne. In 1884 the Mississippi River end was extended 13 miles up the river to New Orleans and in 1886 a further extension was constructed from the first location on the river, some 37 miles down river to Bohemia, a total of some 65 miles. The present company acquired the property and franchises in 1896.

The lands which it served were all sugar and rice plantations and fisheries. Later industries sprang up, a large sugar refinery, paper company, oil refinery, alcohol plant, and several canning plants beside a large area in winter and early spring vegetables, oranges, and other fruits. From 1911 to 1923 the road was under lease to the Gulf Coast Lines. I assumed control in March, 1924.

The land upon which the line is built is only a few feet above gulf level. The main line follows close to the river from New Orleans to Bohemia. The Shell Beach branch—the part first constructed—leaves the main line and going 15 miles to Lake Borgne. Parts of the lands are subject to overflow through violent storms on the Gulf and all of it is subject to floods from any serious crevasse in the levees along the river. The records show 14 serious floods from Gulf storms between 1882 and 1820, interrupting service from 10 to 30 days and on one occasion for 90 days, in every case causing serious damage to crops and heavy expense in repairs to the roadbed. Crevasse have not been so frequent, minor crevasse occurred in 1912 and 1918. In 1922 a most serious one, suspending service nine months on the lower end of the line. The crops throughout that section were ruined.

It cost us about \$200,000 in loss of business and reconstruction. In 1927 a crevasse was created by the city of New Orleans. Service was suspended on the lower main line seven months and on the Shell Beach branch nine months. The line from Violet to New Orleans continued operating. The muskrat industry was seriously injured as was the shellfish and canning industry. Farmers' crops were completely destroyed. The cost to us of reconstruction and loss of business has been well over \$150,000. Of this we have received some \$54,000 from the city of New Orleans and have been forced to bring suit to recover the balance. Another item of occasional expense to us is that of having to remove our tracks and relocate them when the levee boards find it necessary to move the levees farther back. The State has built an excellent highway which parallels our main line and the Shell Beach branch, as a result of which trucks have taken a large part of our local and some of our through business.

In 1918, 1919, and two months of 1920 we were under the United States Railroad Administration, with net railway operating income of \$158,577.80, receiving, however, only \$90,000 in a compromise settlement. Interest on our bonds for that period was \$118,490.

Our net railway operating income since that time has been as follows:

1921	\$43,623.07	1927	\$7,508.90
1922	34,581.81	1928	8,290.53
1923	28,707.29	1929	15,235.96
1924	43,201.13	1930	49,171.93
1925	107,404.33	1931, 11 months	75,987.29
1926	45,394.04		

The interest on our outstanding bonds is \$60,000 annually. No interest has been paid since the coupon due September 1, 1914, nor have any dividends been paid on the stock. Every dollar earned has been used to improve the property, help in the industrial and farming upbuilding of the community, and setting up a reserve against uninsurable contingencies, such as floods from storms, or a crevasse, or the shutting down of one or more of the industries on our line.

The exceptionally large earnings in 1925 were occasioned by the Sinclair oil refinery on our line, which had heretofore brought crude by water from Mexico, unexpectedly purchasing a large volume of Smackover crude which came in by rail, giving us a gross revenue of \$169,804. Our gross revenue from the Sinclair refinery has been:

1923	\$73,778.36	1928	\$101,712.65
1924	162,251.60	1929	97,312.65
1925	278,735.49	1930	7,168.17
1926	162,042.08	1931	306.92
1927	105,625.14		

This plant has been idle since January 1930.

A paper-making company on our line gave us the following gross revenue:

1923	\$27,532.53	1928	\$63,137.26
1924	28,127.79	1929	48,514.58
1925	26,464.93	1930	40,511.48
1926	58,420.59	1931	5,847.27
1927, crevasse	31,850.81		

<sup>1</sup> Deficit.

<sup>2</sup> Moving equipment to Alabama.

<sup>3</sup> Crevasse.

The plant shut down in December, 1930, and moved its equipment to a new plant the company had built in Tuscaloosa, Ala.

An alcohol plant on our line which shut in May, 1931, gave us an average gross revenue of about \$15,000. Our other gross revenue from products of agriculture and miscellaneous sources has averaged about \$50,000 per year but dropped to \$33,000 in 1930 and to about \$20,000 in 1931 exclusive of material being hauled for building a new highway parallel to our line.

Our total transportation revenue has been:

1923-----	\$163,375.84	1928-----	\$226,180.86
1924-----	262,621.90	1929-----	213,304.52
1925-----	377,583.16	1930-----	96,806.97
1926-----	284,243.53	1931-----	76,499.20
1927, crevasse-----	193,240.67		

The Interstate Commerce Commission has ordered us to pay to it \$31,093.33 from excess earnings for the year 1925. We filed our protest and have had a hearing and will shortly file our brief. We disagree with the valuation placed upon our property by the commission and also with the net railway operating income as determined by it. The commission, between the order and the hearing voluntarily made certain minor changes to our advantage, but not sufficient to materially change the amount ordered to be paid. There is nothing in the order to indicate any consideration whatsoever having been given to the absolute necessity of our being permitted, from earnings, to create a reserve fund against such uninsurable contingencies as have been indicated—that is, floods from storms, from crevasses in the levees, and from the cessation of operations of any one or more industries on our line. Such a reserve is essential to enable us to continue our service to the public through periods of disaster or business depression.

Our average yearly bank balance has been:

1924-----	\$23,737.62	1928-----	\$117,032.83
1925-----	72,606.68	1929-----	123,890.17
1926-----	143,836.00	1930-----	101,353.80
1927-----	112,891.69	1931-----	53,507.06

As already shown, we had an operating deficit of \$49,000 in 1930 and \$75,900 in 11 months of 1931. We have paid no interest on our bonds and no dividends on our stock, but we have maintained our service to the public.

Under 15a the taking of one-half of income over 6 per cent of the valuation is by no means the total destruction to be wrought. The remaining half is immediately impounded as a reserve and can only be used when and to the extent earnings are less than 6 per cent and then only for the purpose of paying dividends, interest on bonds, or other securities or for rent of leased roads. The limitations placed on the expenditure of this reserve is merely a further step toward confiscation in so far as applied to us. If we had one, we could not use it to operate the road, pay wages or for fuel, nor to repair flood or other damages to our line, or purchase needed equipment or make extensions. The excess earnings above 6 per cent, one-half of which is to be recaptured, is for the proposed general railroad contingent fund under the control of the commission but so entangled in the specifications of 15a as to be wholly unavailable to us. We can not give the security therein provided for loans and if we were able to do so we could obtain a similar amount elsewhere at a less interest rate.

Our line has been in practically continuous operation for 94 years. Through a part of the time it earned operating expenses, sometimes paid interest on its securities, but at all times perform a necessary public service. If, however, it can not retain sufficient income to provide against uninsurable contingencies, and its other real necessities, and a surplus for interest on its bonds, then the owners of its securities are faced with continuing operations in a negative way, saving everything possible, including service—until depreciation has reached the point of annihilation, or abandoning the property. The whole force of the use of rate-making valuation for recapture purposes is to drive us to the wall—or, more definitely, to confiscate our property until we are forced to accept any casual offer which might be made.

The accounting regulations with which we must comply give little latitude, requiring the use of an annual accounting period, and the valuation set upon the property, with wholly insufficient allowance for working capital, no reserve for uninsurable contingencies, no adequate going-concern value, depreciation running each year thereby reducing the amount which can be retained within recapture, no apparent consideration of our issued securities and our obligation thereunder, all become steps toward ultimate confiscation. It is like making one kind and size of shoe and forcing everyone to wear it.

The earnings of a short line can not be gaged by a 1-year standard. A much longer cycle of time must elapse to establish a level which will conserve to the railroad a safe reserve to carry through abnormal periods; to reproduce its property without having to obtain new money, which dilutes the equities in its issued securities, and to maintain the integrity of its bond issue as a safe investment for the public; for trust funds and for such institutions as insurance companies, which are the safety wardens of our national life. From our records of the past, and considering the future in so far as can be reasonably anticipated, my opinion is that a period of 10 to 15 years—certainly not less than 10 years—would be necessary to establish an average level of income which would preserve the safe continuance of operations and integrity of the investment underlying them.

It must be apparent from the foregoing presentation of the emergencies and conditions with which we are constantly faced—storm, flood, moving parts of our line in concert with the levees, that the percentage variation of income—represented by the sudden cessation, or acceleration, of traffic from one or more of the few industries on our line—the fluctuations of general business both locally and nationally; competition caused by improved highways and the use of motor vehicles, and the difficulties inherent to all short lines—that of obtaining a sufficient division of rates, that the determination of earnings for recapture purposes as applied to a single year without consideration of income or deficits of previous and of succeeding years, is a manifest injustice. The bondholders expect interest to be paid on their investment, and they are entitled to it. If the company had paid that interest from the 1925 earnings and recapture was enforced, the company would not have been able to continue in operation—much less meet the disaster of the Caernarvon flood in 1927 or the almost complete loss of business in 1930 and 1931—in which, notwithstanding drastic reduction in staff and working force and economies in every direction, we have had an actual operating loss of \$124,900 which has absorbed that much of the reserve we had been able to set up—and at this particular period of our troubles, we are forced to expend a substantial sum of our available reserve to appear and submit our protest against this tentative recapture report.

The expectations from section 15a were predicated upon a belief that the transportation business would always increase and that the control of rates was a governing factor. Present conditions show the utter fallacy of that supposition. The essential factor in transportation is volume—rates are secondary. Eliminating 15a, the commission, through the control of rates and particularly of division of rates, is in a position to help the weak roads and give the public the benefit of lower rates when excessive earnings might accrue to any one or more carriers. The same theory upon which 15a was declared constitutional would apply. It is covered in section 15, paragraph 6, of the act.

(The following entered their appearance from American Short Line Railroad Association:)

- W. C. Adams, general manager, Bowdon Railway Co., Bowdon, Ga.
- W. A. Blue, president and general manager, Aberdeen & Rockfish Railroad Co., Aberdeen, N. C.
- W. E. Brown, president, Cowlitz, Chehalis & Cascade Railway, Chehalis, Wash.
- J. E. DuPont, jr., vice president, Pearl River Valley Railroad Co., Picayune, Miss.
- Andrew L. Horst, executive vice president, Cambria & Indiana Railroad Co., 1320 Broad Street Station Building, Philadelphia, Pa.
- F. J. Hughes, president, De Kalb & Western Railroad, Meridian, Miss.
- Van S. Jodon, president, Bellefonte Central Railroad Co., Bellefonte, Pa.
- A. S. Lindsey, general manager, Central West Virginia & Southern Railroad, Hendricks, W. Va.

John Bernard McCaffrey, manager, La Salle & Bureau County Railroad.  
A. C. McDannel, general manager, Port Huron & Detroit Railroad Co., Port Huron, Mich.

Amel T. Nelson, general manager, California Western Railroad & Navigation Co., Fort Bragg, Calif.

F. A. Nelson, traffic manager, Shreveport, Alexandria & Southwestern Railway System, Kansas City, Mo.; representing Longview, Portland & Northern; Louisiana & Pacific Railway; Sibley Lake, Bistineau & Southern; and Mississippi Eastern Railway.

G. F. Thomas, traffic manager, Ashley, Drew & Northern Railway Co.; El Dorado & Wesson Railway Co.; Fordyce & Princeton Railroad Co.; North Louisiana & Gulf Railroad Co.; Warren & Ouachita Valley Railway Co.; Boyle Building, Little Rock, Ark.

H. B. Whipple, traffic manager, New York Dock Railway; Bush Terminal Railroad Co., 44 Whitehall Street, New York, N. Y.

W. C. White, general manager, Cadiz Railroad Co., Cadiz, Ky.

George P. Wilson, traffic manager, Bellefonte Central Railroad, Commercial Trust Building, Philadelphia, Pa.

The CHAIRMAN. We will go ahead at 10 o'clock in the morning, continuing with Colonel Thom's statement.

(Thereupon, at 12.22 o'clock p. m., the committee adjourned to meet at 10 o'clock a. m. the following morning, Friday, February 5, 1932.)

## RAILROAD LEGISLATION

FRIDAY, FEBRUARY 5, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee this day met at 10.00 a. m., Hon. Sam Rayburn, chairman, presiding.

The CHAIRMAN. The committee will come to order.

**STATEMENT OF ALFRED P. THOM, GENERAL COUNSEL OF THE AMERICAN RAILWAY EXECUTIVES ASSOCIATION, AND THE AMERICAN RAILWAY ASSOCIATION, TRANSPORTATION BUILDING, WASHINGTON, D. C.—Resumed**

The CHAIRMAN. All right, Mr. Thom, you may proceed.

Mr. THOM. Mr. Chairman and Gentlemen: I promised Mr. Nelson to put into the record references to some cases that I mentioned by name, but not by volume. I will now do that.

The Dayton-Goose Creek Railway Co. v. U. S., et al. (263 U. S., 456); New England Division case, Akron, Canton & Youngstown Railroad v. U. S. (261 U. S., 148); the O'Fallon case, St. Louis & O'Fallon Ry. Co., v. U. S. (272 U. S., 461).

When I was last on the stand, Mr. Chairman, I was discussing the question of the repeal of that portion of the law, which provides for valuation. I had stated to the committee that if recapture goes, the main office of valuation would disappear.

If, in addition to that, the rate making provision of 15a is changed, as here suggested, valuation will no longer be necessary to that.

It was suggested, however, that valuation would still have a valuable office to perform in connection with the action of the commission in respect to the approval of securities, and I stated in respect to that matter that such elaborate knowledge of valuation as was required by 19a was not at all necessary to the commission in passing on the issue of securities under section 20a; that in administering the latter section, they performed very much the office which a careful lender would perform in making his estimate of value and I might have added then, as I do add now, that this is proved by the situation which has obtained in this country. The commission has, ever since the 28th of February, 1920, been passing upon the issuance of securities. They have done it during all of that time without the aid of this valuation, because the valuation is not yet made. It has been very intelligently done and very successfully done. That such valuation is not essential to it has been proved by the course of the



commission during the last 12 years where they passed on these questions without the aid of valuation, which the commission has not yet completed.

I was coming then to consider the cost to the Government and to the railroads for this valuation work. I may say that a number of executives are now, from time to time, visiting the commission with requests that there be a let up or a discontinuance, at least temporarily, of the valuation work so that in these times of extreme demand for money, they may get rid of that expense. It is an acute subject with them and you will see the reason for it when I give you these figures. I will read them into the record. I will read a few of them and with the permission of the committee I will ask that the table be copied into the record. I hand a copy of it to the reporter for that purpose.

The CHAIRMAN. That may be done.

Mr. THOM. Valuation commenced in 1913. For that year, the Government spent \$10,366.33.

Mr. HUDDLESTON. Colonel, may I ask you the source of your figures?

Mr. THOM. The source of my figures is our valuation bureau. The presidents of the railroads have an organization whose duties are, among others, to attend to this matter of valuation. Mr. Hulme, of Philadelphia, is vice chairman of that organization and he keeps accurate records. The figures I give are furnished me by him. Now, of course, they are subject to checking from the commission's own records so far as the commission is concerned, and I am certain that they are correct, not only as to the cost to the commission but as to the cost to the carriers.

Mr. HUDDLESTON. When you say "our" you mean the railroad executives?

Mr. THOM. Yes, sir.

I will read this table.

Valuation expenses

Year ended June 30	By Govern- ment	By Class I car- riers	Total
1913.....	\$10,366.33		
1914.....	456,565.32	<sup>1</sup> \$1,865,741.25	\$2,322,672.90
1915.....	2,131,924.74	2,713,762.55	4,845,687.29
1916.....	2,984,332.83	5,050,759.08	8,035,092.51
1917.....	3,283,883.91	7,048,922.44	10,332,806.34
1918.....	3,384,444.31	8,014,141.51	11,398,585.82
1919.....	3,525,899.42	8,252,783.50	11,778,682.92
1920.....	2,956,736.08	9,713,923.04	12,670,659.12
1921.....	2,728,656.45	11,480,922.65	14,209,579.10
1922.....	1,595,488.89	8,637,862.46	10,233,351.35
1923.....	1,293,529.16	7,693,164.00	8,986,693.16
1924.....	1,245,718.33	6,647,486.81	7,893,205.14
1925.....	1,064,654.57	6,898,924.75	7,963,579.32
1926.....	1,593,830.36	7,826,763.39	9,420,593.75
1927.....	1,712,051.74	8,432,409.06	10,144,460.80
1928.....	2,067,141.17	8,998,772.31	11,065,913.48
1929.....	2,332,013.13	8,856,766.30	11,188,779.43
1930.....	2,534,978.57	10,581,841.57	13,116,820.14
1931.....	3,246,694.00	9,153,939.67	12,400,633.67
Total.....	40,148,906.31	<sup>2</sup> 137,778,886.94	177,927,793.24

<sup>1</sup> Valuation expenses Mar. 1, 1913, to June 30, 1914; \$12,895,289.16 of the amount spent by railroads was charged to Federal operation, per information received.

<sup>2</sup> Some few carriers not reporting.

Mr. HUDDLESTON. Is it your view, Colonel, that that work should be stopped?

Mr. THOM. Be stopped, except that the archives should be kept, so far as they are now in the hands of the commission, and that the commission should continue to keep itself informed of any changes in the physical properties by way of additions, betterments, retirements, and so forth, so as to have records adequate for any practical purpose.

So far as I can see, if the proposed amendments to 15 (a) are adopted, the only office of valuation would be in confiscation cases. There is enough accumulated in the archives of the commission already to show an inventory of what the carriers' properties consist. The commission would keep that inventory up to date so as to show any additions and betterments, and changes in it. There would thus be no dispute as to what the property is. The only question would be as to its value and that would be then, as it must be always in a confiscation case, a question for the courts.

In a confiscation case, the court has said that it will determine for itself every one of the factors that go into the question that will determine the issue.

So that I do not see how any interest of the Government, of the public, or of the carriers would be prejudiced if this was done away with. I do not know what position the Interstate Commerce Commission will take on the subject.

Mr. HUDDLESTON. May I ask a question?

Mr. THOM. Yes, sir.

Mr. HUDDLESTON. Is it your view that the earnings of the carriers as based upon these practical considerations, that you have referred to, that determines what rates should be, will never exceed a reasonable return; will never be unreasonably high from the standpoint of return?

Mr. THOM. I do not think they can be. You are asking me for my opinion?

Mr. HUDDLESTON. Yes.

Mr. THOM. I do not think that there can be unreasonable earnings from reasonable rates.

Mr. HUDDLESTON. Well, of course, "return" is one of the elements entering into what is a reasonable rate.

Mr. THOM. And whenever it gets to the point—

Mr. HUDDLESTON (continuing). Is there never to be a time in the future when the commission will find it desirable and just in order to determine what is a just and reasonable rate, to know what the investment of the carriers is?

Mr. THOM. No more so than it could get from general conditions. I can very well understand that the earnings of the carriers might, in times of great prosperity, reach such a figure that the commission will say, "These rates are no longer reasonable, and they must be reduced," but I think rate making is an intensely practical question.

I think they would judge that by economic conditions. I do not think it is possible to determine it by value, except to give value the office that it always occupied up to the time of the recapture policy of Congress, of preventing the earnings of the carriers being so low as to amount to confiscation.

Mr. HUDDLESTON. You use the expression, that the fixing of rates is a practical question. Just what have you in your mind, except the effect of the rate on the movement of traffic?

Mr. THOM. That, and on the amount necessary to furnish the public with the needed transportation.

Mr. HUDDLESTON. Then, needed transportation and the movement of the traffic are the two factors?

Mr. THOM. Two large factors to be considered.

Mr. HUDDLESTON (continuing). That should fix the amount of the rate charged?

Mr. THOM. That is what I think.

Now, I referred, or I have brought to the attention of the committee, the three major subjects to which I wish to address myself.

Mr. MAPES. Before you start on that—are you through, Mr. Huddleston?

Mr. HUDDLESTON. Yes.

Mr. MAPES. May I interrupt you to get your position clearly, on this valuation question. You said that the commission ought to keep the records which it now has.

Mr. THOM. I do not quite hear you, Mr. Mapes.

Mr. MAPES. I say, that you said that the commission ought to keep the record which it has already obtained in regard to the valuation, and to keep itself informed on the additions and betterments and improvements made from now on.

Mr. THOM. And retirements.

Mr. MAPES. And retirements; yes.

Mr. THOM. Yes.

Mr. MAPES. Now, this section 3, paragraph (f), of H. R. 7116 starts off by saying:

(f) upon completion of the original valuations herein provided for the commission shall thereafter keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of all common carriers.

The only difference between your position and the commission's position is this, that the commission believes that it should go ahead and complete the original valuation as provided for by law and then keep itself informed about these new matters, and your position is that the commission should not attempt or be authorized to complete the original valuation which it has been working on all these years.

Mr. THOM. I think that is true, Mr. Mapes.

Mr. MAPES. That is the difference between your position and the commission's.

Mr. THOM. That is, as I understand it.

Mr. MAPES. And, as far as keeping informed is concerned, you approve of the provisions of the section 3 paragraph (f).

Mr. THOM. I shall, in a few moments, present to the committee a draft of amendments which I advocate in respect to this bill, 7117.

Mr. MAPES. When Mr. Eastman returns here, I would like to have him tell us how long he thinks it will take the commission to complete the valuation of the roads, and I would like now to have your judgment about that.

Mr. THOM. My judgment would not be worth anything, Mr. Mapes. I have not been engaged in this valuation work, but I will

say, that if recapture is continued, they will never complete it, because so long as recapture remains, they will have to have valuation for each recapture year.

Mr. MAPES. Of course, the valuation law was passed before the recapture clause was thought of, and without any reference to it.

Mr. THOM. Exactly.

Mr. MAPES. The original reasons for the valuation law were quite independent of that.

Mr. THOM. Quite independent of that, and the original reasons have been accomplished.

The commission has obtained a very satisfactory view of the relation between valuation and capitalization, and that was the original object of valuation.

Now, Mr. Chairman, as I say, I have presented to the committee the three major propositions to which I wish to call their attention.

Before presenting the amendments, which I wish the committee would consider, I wish to say a few words more in regard to recapture.

I would like to ask the committee's careful attention to one of the most profound contributions to the thought of transportation that I have come across, which was made by Mr. Justice Brewer in an opinion that he delivered in the Supreme Court.

The case to which I refer is the case of *Cotting v. Kansas City Stock Yards Co.* (183 U. S. 95). I rank Mr. Justice Brewer as one of the greatest justices that ever adorned the Supreme Court. There are two points involved in the quotations that I shall read to you. One is that relating to the proposition of law to govern earnings. I mean, the proposition of economic law to govern earnings, and the other relates to the power of Congress to deal with that law.

Mr. Justice Brewer, when he delivered this opinion, was evidently of the opinion that the power of Congress to deal with questions of this sort was more circumscribed than the Supreme Court has subsequently held it to be.

Whatever may be the power, you gentlemen are sitting here to determine what the proper policy is, not what the extent of your power is, and, whatever may be your judgment of your power, I feel confident, that what Mr. Justice Brewer said as to the principles involved, will arrest your most careful consideration.

Here is what he says:

Pursuing this thought, we add that the State's regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day and his charges in each are but a reasonable compensation for the benefit received by the party dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the services rendered. He has a right to do business. He has a right to charge for each separate transaction that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation, and may not interfere simply because out of the multitude of his transactions the amount of his profits is large.

In that case the court was dealing with a stock yards company. In the case of *Louisville & Nashville R. R. Co. v. Estabrook* (184 U. S., 46), that same rule was declared to be applicable to railroads.

Now, of course, I can see the prominence that the idea has in the minds of many people that here are large profits derived by some of these railroads, and a tendency to say that, simply because the profits are large, that means that they are making too much.

It must be borne in mind in considering that question that if the rates are reasonable, the profits coming from increased service, not from increased rates, are reasonable.

Here, in the bituminous region, served by the Pocahontas carriers, in one year the amount of coal they handled was 541 per cent, I think, more than in the previous year. Naturally, they made more money, but they performed more service and the amount of their earnings was attributable to the quantity of their services, and not to the rates.

I wish the committee would bear that in mind in considering this general question, because I believe there is a profound philosophy underlying that view, and certainly I can see how, considering the condition of industry which is served by these carriers, considering all of the economic conditions involved, that the amount of the earnings of these carriers might be an adequate and satisfactory reason for the commission to say, "under all of the circumstances surrounding this matter, we think your rates are too high and they must come down."

That is a matter of conscientious judgment of men trying to adapt the rules of commerce to the conditions of commerce.

Now, passing along a little further—

Mr. GILLEN. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Gillen.

Mr. GILLEN. You spoke of the Pocahontas field, and the earnings from that field.

Mr. THOM. Yes, sir.

Mr. GILLEN. I would like to call your attention to a matter in connection with that, and in connection with what you have said relative to a proper basis for rate making.

If I understand you correctly, you have said in part that rates must be based upon the particular facts under a particular situation.

Mr. THOM. Yes, sir.

Mr. GILLEN. Now, as I understand, the Chesapeake & Ohio and the Norfolk & Western, are two of the railroads that have been fortunate enough to make excess earnings. I understand that they can put coal into Chicago from Charlestown, W. Va., at a rate which is about 50 per cent less per ton mile than the coal from Terre Haute, Ind., can be placed in Chicago.

We know that the bituminous fields in Illinois and Indiana have been on the rocks for at least four or five years, gradually going down until there is practically no business in the bituminous fields. I think the record will show that the railroads serving that bituminous field are also on the rocks.

Taking your base for rate making, applying it to all of the circumstances, just how would you remedy the situation? Would you reduce the rates for coal from the Pocahontas Field, and increase the rates from the bituminous field in the Mid-West?

Mr. THOM. Is that your question?

Mr. GILLEN. Yes, sir; that is the question.

Mr. THOM. My answer to that would be that I would have to consider that subject after one of the economic conditions had been revealed to me, and I do not know just what I would do under any given case, until that complete survey is made.

Mr. GILLEN. I realize that, but in a general way, taking your base for rate making, what would you say, in a general way, would be a remedy?

Mr. THOM. Well, what has been done in two competing fields for the lake deliveries is this: There are two bituminous fields competing for that business. One is the bituminous field in Pennsylvania, and the other the field in the Pocahontas region. There has been a long and protracted controversy between the roads serving those districts as to what ought to be done in equalizing of rates. Finally the commission has said there shall be a certain differential between the two, and they have tried to adjust that so that each one would have a fair show at the lake traffic.

Now, all of those things are to be taken into consideration. It may be that you would have to treat that situation you have referred to by some differential, but at any rate all of the conditions would have to be studied, and the best judgment that human beings can give to it would have to be made the basis of a decision in respect to the conditions that are applicable.

Mr. GILLEN. If I understand correctly, recently the commission dismissed an application for increase in the bituminous region, did it not?

Mr. THOM. I think so; I do not keep up with those matters, so I do not know; but I think that you are right.

Mr. GILLEN. Now, as to the roads that are able, that are able to earn the excess, and the roads that are not—the roads that are able to earn the excess are able to render superior service by keeping their roads and equipment up, while those that are not able to earn the excess, the weak sisters, we understand, can not.

The question in my mind is, taking the case that I have cited as a concrete example, how can that condition be remedied?

The operators of the bituminous coal fields in the mid-West are complaining bitterly on account of a discrimination in freight rates, and I bring this example forward in order to get your idea on how that condition can be remedied.

Mr. THOM. My idea of practical rate making is exceedingly limited. I have had no experience in that line, but what I would suppose would be the complaint of the Indiana and Illinois mines would be that these other roads can put coal into the market which they wish to reach at such a cheap price that these Indiana and Illinois lines can not compete, and I assume that therefore their remedy would be to ask the commission to establish a proper differential between the rates applicable between the various fields.

Mr. GILLEN. There is that factor entering into it, and I wanted a discussion from the standpoint of the freight rates, and its effect on that situation.

The CHAIRMAN. Mr. Gillen, before we leave that, let me ask you one question. Is there a difference in cost of production, in producing the coal, in these two fields?

Mr. GILLEN. I can not give that, as a matter of my own judgment. I am informed that there is.



Now, from the standpoint of the recapture clause, if the theory of the recapture clause had worked out in practice, I understand it is in evidence here that the railroads in the Pocahontas field, under the estimate of the commission, owed 26½ per cent of the estimated recapture fund in the country, or around \$100,000,000.

Now, if the recapture clause is repealed, retroactively, and these railroads serving the Pocahontas field are permitted to retain that excess earnings, which approaches, under the estimate given by the commission, \$100,000,000, will they not be able to give more superior service than they are now giving and thereby further handicap the bituminous fields, and the railroads that serve them in the mid-West?

Mr. THOM. It would be easy enough, as I say, to adjust the relation between the two by a differential, and I do not think that it can be properly said that superior service to the public should be withheld because of some other situation in the country. In other words, if the public can be served better from the Pocahontas field than they are now served, that superior service ought not to be withheld from them simply because some other section of the country can not be served as well. We all have got to recognize our natural handicaps whatever they are.

Mr. GILLEN: Well, Colonel, I have been interested to know whether or not the recapture clause had any friends whatever.

Mr. THOM. I heard you ask that question, and I heard the answer that the witness gave, that he did not think that there were any.

Mr. GILLEN. And, I was just wondering whether there was an illustration showing that if the theory of the recapture clause had been carried out and this \$100,000,000 had been recaptured from the Pocahontas field and was available now, would it not be equitable to administer it under the law as written so as to help the mid-western roads serving the bituminous fields there?

Mr. THOM. There area very considerable number of assumption in your question. One is that if it had been recaptured, and was available now. I understand that there is \$100,000,000 difference between the valuation that is insisted upon by the Interstate Commerce Commission and the Norfolk & Western road. I understand that that is a matter of very serious litigation. I do not expect that question to be solved for years to come, so that the assumption of having it now, is an impossible one.

Mr. GILLEN. You understand my question. I was just trying to carry the theory into practice.

Mr. THOM. I understand your question, but here is a consideration which must not be, I think, in justice, lost sight of, to insist on that recapture policy—speaking now entirely aside from any interest of any railroad, because I have not come here to plead for the interests of any railroad.

Mr. GILLEN. I understand that.

Mr. THOM. But, tested by the interests of the public it will result in such bankruptcy, such a burden upon the economic prospects of recovery, that every interest in this country, from agriculture around, will be greatly prejudiced because our economic recovery will be indefinitely postponed.

Now, that is a large consideration that I wish to bring to the attention of this committee. Is it sound policy for this committee to insist on a policy which means additional bankruptcies through the

roads subject to recapture, which would have a disturbing effect upon all of the other roads, even if they are not in the recapture class, because of the economic conditions with which they have to deal and the same is true of every other industry in the country in addition to the railroads?

Mr. GILLEN. Mr. Thom, I do not want you to understand by my questions that I am failing to see the evils of the recapture whatever they are.

Mr. THOM. Yes, sir.

Mr. GILLEN. Now, just one more point. I was interested in your discussion of the equities surrounding the repeal of section 15a retroactively, and the disposition of the recapture fund.

In matters of this kind, does not the superior equity control the distribution of a fund of this character? Should it not control it?

Mr. THOM. I have no doubt in the world that that is true as a statement of a general principle.

Mr. GILLEN. Would there have been a recapture fund if the rates had been fixed on a proper basis? The excess has been paid by the shippers, has it not?

Mr. THOM. If there is any excess.

Mr. GILLEN. Well, whatever there is.

Mr. THOM. But I am claiming that the rates which were to be the base of recapture have never been in effect, and therefore, there is no excess.

Mr. GILLEN. Assuming that there is an excess—then, let us assume.

Mr. THOM. Well, that is a right big assumption, but I see what inference you wish to draw.

Mr. GILLEN. The shippers paid the excess.

Mr. THOM. The shippers paid the revenues; the rates.

Mr. GILLEN. Very well, that is where it came from; the shippers paid it, as I understand.

Mr. THOM. But, it was not excess because it was all made under rates, under section 1, and the Supreme Court has said that the shippers have no equity.

Mr. GILLEN. The shippers?

Mr. THOM. The shippers. The Supreme Court said that in the Goose Creek case. They had to say it in order to sustain that case.

The CHAIRMAN. Well, they also said that the railroads did not have any equity in it either.

Mr. GILLEN. At least, the thing that I am trying to do, and I take it that the committee is trying to find out, is who has the superior equity.

Mr. THOM. Well, we have got the fact that the shippers have been determined by the Supreme Court to have no equity; we have got the fact that the rates which were to be the base of excess earnings have never been in effect; that the earnings flowed, not from them, but from reasonable rates, and that is proved by the fact that the commission attempted to put such rates into effect in 1920, and under the pressure of economic prices immediately began to abandon them. Mr. Eastman comes here and tells you that the rates are the same as they would have been if the provision had not been in the law, and that in the making of rates that provision had no effect, and Mr. Benton tells you the same.

Mr. GILLEN. One more question,

Assuming that the freight rates affecting the Pocahontas field and the bituminous fields that I have mentioned are a factor in conditions in those fields, one being up and the other being down. What remedy would you suggest that would open the bituminous fields?

Mr. THOM. The one I have just suggested, for the case to be put before the Interstate Commerce Commission, for them to make a study of the question of whether there is a proper relation of rates between the two fields, and if not, to establish a differential. That is all.

Mr. HOCH. Right on that question, Mr. Gillen, do you have the actual freight rates from the two fields?

Mr. GILLEN. Yes.

Mr. HOCH. You spoke about the ton-mile rate. Of course, the distance is much greater from the Pocahontas field.

Mr. THOM. Yes, sir.

Mr. GILLEN. Very much greater.

Mr. HOCH. What is the rate?

Mr. GILLEN. The actual rate from Terre Haute is \$1.61, and Charleston, W. Va., \$3.15. The rate per ton-mile from Terre Haute, Ind., is 9.04 mills; and the rate per ton-mile from Charleston, W. Va., is 6.36.

Mr. CROSSER. What was that last?

Mr. GILLEN. 6.36.

Mr. HOCH. The Indiana field has about 1.40 difference now.

The CHAIRMAN. Nearly 100 per cent.

Mr. HOCH. Yes; into lake ports on actual freight rate. How are you going to have a differential that will do very much more than that? It might be possible. I do not know.

Mr. GILLEN. That is the point I am getting at.

Mr. THOM. Well, I think that requires most deliberate study and consideration by those charged with that duty.

Mr. HUDDLESTON. May I ask a question?

Mr. THOM. Yes, sir.

Mr. HUDDLESTON. I want to ask what authority is there under the law for the commission to consider the fixing of these rates on the particular businesses, upon their ability to compete with each other and for instance to make a differential that will enable me, if I am operating a mine under unfavorable conditions, in one field, to compete with you, in another field, where you are operating under favorable conditions.

Mr. THOM. That is a matter of great dispute, Mr. Huddleston.

Mr. HUDDLESTON. Do you know of any authority of law for that?

Mr. THOM. Well, that is a matter of very great dispute, and I can not point you to anything that makes the commission an arbiter of economic relations, unless it is the Hoch-Smith resolution.

Mr. GILLEN. Could that be considered in the public interest?

Mr. HUDDLESTON. It is in effect a tariff duty between the States which is forbidden in the Constitution.

Mr. THOM. It may be that there is a great deal of substance in what you have in mind, Mr. Huddleston, but there is a great dispute about whether the power exists.

Mr. HOCH. In the fixing of rates, regardless of what the power may be, the commission has always given consideration to conditions existing.

Mr. THOM. I think they have.

Mr. HOCH. As a practical matter, they have had to give consideration as between different commodities, and different localities.

Mr. THOM. You have got to give consideration to them.

The CHAIRMAN. You have got to give consideration to them, or you are going on a mileage basis for each bushel of wheat, and each bushel of corn.

Mr. SHALLENBERGER. Colonel, I do not want to stop you, because I know that you want to go on, but I want you to repeat again a statement that you made that both Mr. Eastman and Mr. Benton have agreed that the rates are no different from what they would have been if we had not had the rate making rule.

Mr. THOM. That is what I understood they testified.

Now, may it please the committee, I wish to call attention to another question.

Mr. SHALLENBERGER. In other words, they mean that section 15a has not had any effect on the railroad rates.

Mr. THOM. That is what those gentlemen said before you.

Mr. SHALLENBERGER. You do not think so either?

Mr. THOM. I do not think so, because I do not think that they have.

Mr. SHALLENBERGER. You also think that is true?

Mr. THOM. I think it is true also.

Mr. SHALLENBERGER. All right.

Mr. THOM. Mr. Chairman and gentlemen: A question has arisen here about what has become of these earnings of the railroads. They have not got them. They have not set up any reserve against any recapture claims.

Now, what has become of them? It will be remembered that the railroads, when they were returned to their owners by the Government were returned in a condition in which they could not perform the public service.

In the year 1922, the commission, of its own motion, instituted an inquiry into the inadequacy of locomotives and cars throughout the country. I have referred to the complaint of the shippers in 1920. And, in the years 1921 to 1923, there were 10 or more complaints filed with the Interstate Commerce Commission of inadequate transportation facilities by rail.

In addition to that, the Senate, on January 20, 1923, passed a resolution known as Resolution 414, calling attention to the inadequate transportation facilities in the northwest Pacific States. This resolution was made the basis of an elaborate investigation by the Interstate Commerce Commission, which made a report thereon, and which will be found in I. C. C. Report 87, at page 472.

Now, with the background of complaints, with that condition of inadequacy of transportation facilities, the Association of Railway Executives met in New York on April 5, 1923. I was present at the meeting, and they adopted this resolution. After having reviewed the capacity of the roads, in respect to equipment, they passed this resolution.

The railroads in full realization of the necessity for the greatest improvement and expansion possible in the country's transportation facilities to meet the growing demands of commerce, actually expended in the year 1922:

For cars.....	\$200, 000, 000
For locomotives.....	45, 000, 000
For trackage and other facilities.....	195, 000, 000
Total.....	440, 000, 000

The railroads have authorized expenditures for equipment and other facilities of approximately \$1,100,000,000 for the year 1923, divided as follows:

For cars.....	\$515, 000, 000
For locomotives.....	160, 000, 000
For trackage and other facilities.....	425, 000, 000
Total.....	1, 100, 000, 000

The railroads of the country are raising this enormous amount of additional capital largely through borrowed money on the abiding faith in the fairness of the American people and reliance on the continuance of the policy announced in the transportation act of 1920, as a measure of reasonable protection to investment in railroad property."

Now, pursuant to the policy, then adopted, the railroads have proceeded in the intervening period to put into their facilities in the neighborhood of over \$5,000,000,000.

The money they have earned has not gone in the way of extravagance. It has gone back into the creation of facilities for the service of commerce.

With this explanation, gentlemen, and remembering your admonition that I should be as brief as possible, I wish now to come to the presentation to the committee of some proposed amendments.

I am going to send to each member of the committee a copy of these proposed amendments. These are proposed amendments to H. R. 7117.

Now, in explanation of these proposed amendments, I want the committee to understand fully my attitude and the policies which I advocate. The amendments here presented are based upon the repeal and getting rid of the recapture provisions. Those that I represent are not in entire agreement as to the rate-making rule. There is a substantial and a very intelligent number of them that value the present rate-making rule very highly, and I am not in a position to say for the carriers that, if recapture is not repealed, they are in favor of the rate-making rule expressed in this bill.

The two things go together, so far as my advocacy is concerned, and so far as my thought is concerned. They are not to be separated and considered as independent propositions. What I am now proposing is intended to be a homogenous system of regulation, the parts of which are interrelated, except that in respect to the repeal of valuation. The repeal of the valuation act is not necessarily involved in these other things, but the rate-making rule and the repeal of recapture are absolutely interrelated so far as my authority goes, and so far as my advocacy here goes.

Mr. HOCH. That includes the retroactive feature?

Mr. THOM. Yes, sir.

Mr. HOCH. That is, if we should repeal it for the future, that would not be sufficient?

Mr. THOM. That would not do any good.

Mr. HOCH. You would still want a change in the rate making rule?

Mr. THOM. That would not do us any good.

Now, gentlemen, if you take up bill 7117, you will see the suggestions that are proposed.

You will see that the first suggestion that is proposed is a mere verbal change I happen to think would be an improvement on the draftsmanship of that enacting clause independent of the amendment, to read as follows:

Section 15a of the interstate commerce act as amended (U. S. C., title 49, sec. 15a), be, and it is hereby amended by substituting for it a new section which shall read as follows:

Sec. 15a (1) when used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

Mr. HUDDLESTON. That first change that you are proposing—does it have any different meaning from the language originally used?

Mr. THOM. I do not think that it would.

Mr. HUDDLESTON. Or, does it merely improve it, as a matter of draftsmanship?

Mr. THOM. That is all. It is not intended to make any substantial change.

Mr. MAPES. I think that the legislative council would overrule you on that suggestion.

Mr. THOM. What is that?

Mr. MAPES. I think that the legislative council would overrule you on that suggestion.

Mr. THOM. What is that?

Mr. MAPES. I think that the legislative council would overrule you on that suggestion.

Mr. THOM. Well, it may. However that may be, I take the liberty of presenting it here for consideration.

Paragraph 2 [reading]:

2. In the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, (1) to the present and reasonably prospective transportation needs of the country; (2) to the necessity, in the public interest, for the carriers to be able to establish and maintain a sufficient credit to attract capital required to meet and provide for these transportation needs; and (3) to the necessity, in the public interest, that the carriers furnish transportation service rates consistent with adequate service and the meeting and providing for the transportation needs of the public;—

There is no change suggested in that clause, which seems to me unobjectionable. Questions from members of the committee have indicated that perhaps they would prefer a rule somewhat differently expressed, and I here call attention to this extra sheet, which is intended, if it is desired, to take the place of so much of that paragraph as I have just read. That reads:

In the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, to the existing needs of the public for adequate and efficient transportation facilities and service, to the necessity for enlarging and improving such facilities, and service to provide for the growing transportation needs of the public, to the effect of proposed rates on the movement of traffic, and to the necessity, in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service and adequate provision for the transportation needs of the public;—



You will note that I have introduced this clause, namely, "to the effect of proposed rates on the movement of traffic," so that that portion of the paragraph will read:

to the effect of proposed rates on the movement of traffic and to the necessity, in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service and adequate provision for the transportation needs of the public.

Now, in my own judgment, the amendment that I have just read would perform the same service as the original text and perhaps in the main, would be more acceptable to some of this committee than what the commission has presented, which I read formally.

I proceed now with the commission's draft. Taking it up in line 10, page 2:

and the commission shall, so far as practicable, initiate, modify, establish, or adjust rates so that the revenues derived therefrom will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, constitute a sufficient basis for the maintenance of a national system of railway transportation at all times adequate to the needs of the public: *Provided*, That the commission shall have reasonable latitude to modify or adjust any particular rates which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

Now, for convenience, I strike out the balance of the bill as presented, and present in a continuous form the suggestions I have to make, which, however, includes some of the things that I have struck out, and also includes the amendment offered here by Mr. Fulbright in respect to the repeal of recapture.

It is hereby declared a sound principle of rate making that carriers shall, in times of economic prosperity, be permitted to make earnings which will, as far as practicable, avoid the increase of rates in times of economic depression. To that end, it is hereby declared the duty of the commission, in the exercise of its sound discretion, to maintain as far as possible a general level of rates which, over a reasonable period of years, will produce revenues consistent with that standard.

That last sentence is from the commission's bill; the sentence that I have just read is in recognition of the criticism which I believe to be sound, that under the present method of rate making, the tendency is to decrease rates in times of prosperity and to increase them in times of depression. That is the criticism made by the shippers. I have never seen an answer to it. I think that is true, and I think that is an unsound rate policy. I believe that when the people are best able to pay rates, that there ought to be an opportunity for making the earnings which will tide over the carriers in times of depression in their business.

Mr. HOCH. Would you mind an interruption, or would you rather go on?

Mr. THOM. No, sir.

Mr. HOCH. On the question you were just discussing, there seems to run through the discussion a certain idea that I would like to refer to. Do increased rates always bring increased revenue, as a matter of fact?

Mr. THOM. No, sir.

Mr. HOCH. As a matter of fact, in 1921 or 1922, when the rates were decreased there was an increase in revenue, was there not?

Mr. THOM. That is not correct, increased rates do not always increase the revenue, but you have to use the best managerial and administrative judgment in respect to what the effect will be.

Mr. HOCH. Even this first sentence seems to carry that idea, that you have to have an increase of rates in times of economic depression, if you want to get more revenue.

Mr. THOM. No; that does not refer to rates. That refers to revenues.

Mr. HOCH. It seems to refer to rates.

Mr. THOM. (reading):

It is hereby declared a sound principle of rate making that carriers shall, in times of economic prosperity, be permitted to make earnings which will, as far as practicable, avoid the increase of rates in times of economic depression.

Mr. HOCH. Yes.

Mr. THOM. Have earnings from rates, not loss of earnings from rates; but have earnings from rates.

Mr. HOCH. I refer to the last part of the sentence:

be permitted to make earnings which will, so far as practicable, avoid the increase of rates in time of economic depression.

That seems to suggest that an increase of rates would naturally be called for in a time of economic depression, in order to permit the railroads to get more money.

Now, my view is, that very frequently the very opposite is true, that a decrease of rates is what is needed to bring increase of revenue.

Now, taking the present situation, is it true that the increase of rates, recently put on, is bringing in increase of revenue?

Mr. THOM. I think so, in many ways, and I think you have got to think the subject through in this way, Mr. Hoch: There is a great body of traffic that moves, anyhow, that is not dependent on extraneous conditions. That body of traffic, if you increase rates on it, will increase the revenues.

There is another body of traffic which would not move anyhow, and which might be driven off to competing carriers.

Now, what would be the managerial duty in respect to that? Suppose they were allowed to increase rates? Here the carriers would be coming with an application for the purpose of increasing their revenues. They are allowed an increase in certain rates. They see that to do that would repel business, either stop it from moving, or send it over to some competitor. Now, what is the wise managerial decision? It is to watch that situation and to adjust the rates so as to prevent that consequence.

Mr. HOCH. Well, I think so, but it seems to me that the management was rather blind to the economic facts in many cases. The short-haul business is being lost very largely because of the other competition, and they are now proposing to get more business by increasing those rates.

Mr. THOM. I think that you will find that there is a universal purpose to make the readjustment so that the earnings will be increased. That is a matter of managerial discretion, and managerial skill, but you may rest assured that what you have in mind is in their minds, and that they are not going to allow this increase of rates to result in diminished revenues. That is not their purpose. That is not what they are there for.

Mr. HOCH. It may not be their purpose.

Mr. THOM. That is not what they are there for, and they are men of ordinary intelligence, such as we are, that would take all those matters under consideration.

Now, proceeding with the reading:

In years when the net railway operating income—

I want, before reading that, I want to make an explanation. The suggestion that I am about to read is one that I have been able to submit to some of my clients, but not to all. It is a provision which I consider very wise. I have found no dissent from it, on the part of those to whom I have been able to submit it. But, I can not come before you and say that it is a provision that has been passed on by, and that I was authorized to make on behalf of all of the railroads.

What was my object in putting it in there? I found that the commission, in Ex parte 103, and in its last report to Congress, calls attention to this difficulty and they say, "Suppose we allow you in good times to amass some revenues for the purpose of tiding you over in times of depression. Ought there not to be some adequate provision, in respect to those revenues, for holding a part of them in cash or liquid form so that they may be available for use in times of depression."

Up here in this 15 per cent case, which in the early stages I had nothing to do with, but the argument was made there, "Look at the surplus of these railroads. Why not take that and use it to tide over these times of depression?"

The answer was that all of that surplus is in physical property. It is in equipment, in sidetracks, in improved facilities, and you can not get any cash for it without disposing of those facilities. There is nobody to whom you can dispose of them, so that in that case it was unavailable, and there I believe that the commission's position is a sound one, that when revenues are more than needed in prosperous years, a certain proportion of them should be kept in cash or liquid form for use when they are not—the revenues are not—adequate.

Mr. NELSON. Is that the commission's position now?

Mr. THOM. What I have just said?

Mr. NELSON. Yes.

Mr. THOM. Yes; they said it in Ex parte 103 and in their report to Congress.

Mr. NELSON. Why do we need to state it in this act then, if that is their position now?

Mr. GARBER. That was their suggestion, but they had no power to do it.

Mr. THOM. Yes; that was their suggestion, but they had no power to do it.

Now, this draft that I make here makes it a matter of law that it shall be done; and I want to find a measure of how much of these earnings in prosperous years should be laid aside in cash or liquid form.

The only measure that occurred to me was to use the property investment account of the carriers as a measure.

That is not proposed as a measure of rates; it has nothing to do with rates. It is a measure of how much of the revenues shall be laid aside in cash or liquid form.

So that I suggest as a rule which I believe expresses good management, the following:

In years when the net railway operating income of any carrier exceeds 6 per cent of its property investment account, one-half of the excess over that percentage shall be preserved by it in cash or in liquid form for use in years when its net railway operating income falls below 6 per cent of such property investment account; provided that no carrier shall be required to make any such reserve of cash or assets in liquid form in any year, unless, in that year, its net railway operating income is more than sufficient to provide for its fixed charges; provided further, that after such reserve fund has been accumulated and maintained at an amount equal to 5 per cent of its property investment account, the remainder of its net railway operating income may be used by it for any lawful purpose.

You gentlemen all realize exactly where that comes from. It is based upon those provisions of the present law which relate to the one-half of what are termed excess earnings, which the carrier may retain. It defines what that is and says that the carriers shall keep that much in cash or liquid form for the purpose of relieving the traffic of the country in years of depression to the extent that that cash, that that money, would give such relief.

Mr. SHALLENBERGER. Why not make it 6 per cent upon the capital stock, rather than the property investment?

Mr. THOM. Because you know what the property investment account of the carrier is. That is the reason that it is taken, but 6 per cent on capitalization is something else.

Mr. SHALLENBERGER. I thought you meant valuation. You mean property?

Mr. THOM. Yes.

Mr. SHALLENBERGER. That is all right. You would first pay the fixed charges and then the dividends on the capital stock?

Mr. THOM. I have not said anything about dividends.

This provision assumes that 6 per cent on its book investment account will provide a fund sufficient to meet a carrier's fixed charges, its dividends.

The CHAIRMAN. Mr. Thom, do you not fear, if we should follow that suggestion, that you would go back into involved language that would become impossible to administer, just as the Interstate Commerce Commission says about 15a now? Do you not have very great fear that if we put that kind of language in the statute we would have the complaint which has been made by the commission, the the language has been too involved in section 15a, in connection with rate making, making it impossible of administration. That is what Mr. Eastman testified to. It seems to me now when we have been talking here about swinging away from the straight jacket, that this language might get us back into it.

Mr. THOM. Well, it does not seem to me so, Mr. Chairman, and I will explain my reasons for it. Of course, we know from the accounts, what the railway operating income is. That is ascertained under uniform accounting orders made by the commission. We know also by an inspection of the carriers' accounts what the property investment account is. That requires nothing except inspection. Then, you can say that if these net railway operating incomes exceed 6 per cent on the property investment account—both known factors—one-half of the balance shall be laid aside and, it seems to me, not only that there is no complexity in it, but it almost administers itself.

Now then, the section—

The CHAIRMAN. What is going to become of the road that is in the same situation as some of these roads are now, that do not make the 6 per cent?

Mr. THOM. What?

The CHAIRMAN. What are you going to do about the roads that do not make 6 per cent? What are you going to do about those that do not have any excess to lay aside?

Mr. THOM. They do not have any excess?

The CHAIRMAN. It will go from bad to worse, will it not?

Mr. THOM. What did you say, Mr. Chairman?

The CHAIRMAN. It will probably go from bad to worse, as it appears to me, and we will be in the same situation that we are in now.

Mr. THOM. But, they will have it if they have earned it. This does not make a requirement as to any part until there is 6 per cent earned. That is all that this does. It does not affect their earnings, it does not enlarge them, does not increase them; does not affect them in any situation. This merely says that, where the carriers earn more than 6 per cent, they shall have a cash reserve here defined, and it does affect the roads that do not earn 6 per cent. This does not say that they shall lay any amount aside.

The CHAIRMAN. Do you think that there is any necessity for any command in this language to the commission to try to reach that point in rate making, affecting the earnings of the carriers?

Mr. THOM. There is nothing here at all that suggests a rule of rate making. In one, given above, there is simply the responsibility on the commission to so adjust rates, if possible, as to furnish the country with the transportation it needs. That is all.

Mr. HUDDLESTON. In line with Mr. Rayburn's question section 15a, was drawn with the view to doing something for the weak roads. It has failed of its purpose. The proposal now is to repeal it. Are these weak roads to be left to their own devices in the future? Are we to abandon any idea of doing anything for them?

Mr. THOM. I do not think so, but I think you ought to do it in another way. I think that they ought to be provided for through consolidation as they are rapidly doing. I do not think there is any other way of dealing with that proposition, because—

Mr. HUDDLESTON. A weak road that can not earn a fair return, and can not pay operating expenses—we ought to load that onto a prosperous system, against the will of the latter.

Mr. THOM. They are doing it.

Mr. HUDDLESTON. Yes; it is generally recognized that the transportation furnished by these weak roads is necessary to the public.

Mr. THOM. And therefore, under even the existing imperfect consolidation law the power exists in the commission to say, "We will approve your proposal of consolidation, provided you take in road A, B, or C, and we will not do it unless you do," and that is being done all over the country to-day.

Mr. HUDDLESTON. That is the best the railroad world is able to give as an answer to the problem of the unprofitable roads?

Mr. THOM. Yes; and for this reason, that there does not exist anywhere, as I said the other day, and I would like now to repeat it, there does not exist anywhere, a power in Government to take from one road to help another until after the road whose assets are to be

taken has received a fair return on its value or a fair return for its services. You can not do anything below that mark.

Mr. HUDDLESTON. But when we exact as a price of consolidation that a prosperous carrier shall take on the losing business of another carrier we are in effect doing that.

Mr. THOM. No, sir; because you leave it then to the carrier whether to go on with consolidation.

Mr. HUDDLESTON. Yes; I understand that.

Mr. THOM. And it accepts that burden, if it accepts the condition.

Mr. HUDDLESTON. But as a practical matter it is taking something from the stronger road.

Mr. THOM. I do not think that has been found to work badly, Mr. Huddleston.

Mr. HUDDLESTON. Now, in the instances in which the carriers refuse to accept these terms of consolidation and will leave out the roads that can not pay operating expenses—

Mr. THOM. They can not consolidate then.

Mr. HUDDLESTON. What are you going to do with those roads?

Mr. THOM. Then, those roads will have to follow, naturally, the fate of unwise investments.

Mr. HUDDLESTON. Be pulled up and junked?

Mr. THOM. Whatever happens to that class of property. They will have to be left to their own devices.

Chief Justice Shaw, in an early case in Massachusetts, announced this as a sound principle, that no road was necessary where the public that it served was not willing to pay for it.

Mr. NELSON. Do you agree with him?

Mr. THOM. I beg your pardon.

Mr. NELSON. Do you agree with him?

Mr. THOM. I think so; yes.

Now, section 2 [reading]:

SEC. 2. On and after the effective date of this act all moneys which were recoverable by and payable to the United States, or to the Interstate Commerce Commission, under the provisions of paragraph (5) or (6) of section 15a of the interstate commerce act, as heretofore existing, shall cease to be payable to and recoverable by the United States or by the commission, and all proceedings pending for the recovery of any such moneys shall be terminated. Within 60 days from and after the passage of this act the commission shall liquidate the general railroad contingent fund then existing and shall return to each of the carriers who have paid recaptured earnings into such fund such proportion thereof, after due allowance for differences in dates of payment, as the amount paid in by such carrier bears to the total amount of earnings recaptured from all carriers, so that all sums whatsoever realized from such fund or its use shall be distributed to the contributing carriers in proportion to the amount of recaptured earnings paid in by each of them to the general railroad contingent fund, after making due allowance as aforesaid for differences in dates of payments.

Now, section 3. If this recapture is now repealed, even though ab initio it does not repeal from the start the effect of the recapture law. It leaves in effect those provisions which relate to the restrictions which are placed upon the part of the funds which the carrier is allowed to retain.

Therefore section 3 becomes necessary.

SEC. 3. All requirements and restrictions imposed by the provisions of paragraphs (6), (7), and (8) of section 15a as to the one-half of the excess earnings, as defined therein, which a carrier is permitted to retain, are hereby removed and repealed.



Now, section 4 adopts Mr. Eastman's—perhaps section 2—I do not know what it is, but is just the exact terms of one of the sections he proposed.

SEC. 4. That section 5 of the interstate commerce act, as amended June 10, 1921, be, and the same is hereby, further amended by striking out subdivision (b) of paragraph (6) and lettering as (b) the next succeeding subdivision, which is now lettered (c).

Subdivision (b) has to do with the securities at par, and so forth, in connection with consolidation, and it is put in here simply to adopt the commission's suggestion with respect to that situation.

#### Section 5.

SEC. 5. That section 19a of said act be, and it is hereby, repealed. The commission shall carefully preserve in its archives all documents and papers connected with work so far done by it under said section and shall hereafter keep itself informed of all new construction, extensions, improvements, additions, betterments, and retirements and of all changes in investment therein.

Now, those are the amendments, which I respectfully submit and ask that they receive the attention of this committee.

That concludes my statement.

The CHAIRMAN. Any questions?

Mr. MAPES. I notice that you put in the words "additions and betterments," in addition to what has been the language of the commission in the commission's bill. What significance have those two words?

Mr. THOM. "Additions" and "betterments"?

Mr. MAPES. Yes.

Mr. THOM. They are just words of art, and are usually used.

Mr. MAPES. They are in addition to the words used in the commission's bill.

Mr. SHALLENBERGER. Colonel Thom, in your second amendment, where you provide for building of a surplus fund out of the excess above 6 per cent, the language reads:

exceeds 6 per cent of its property investment account.

Now, the 6 per cent would be determined after the expenses are paid, and the fixed charges are paid. Is that what you mean?

Mr. THOM. Not after the fixed charges are paid, but the net railway operating income is definitely determinable.

Mr. SHALLENBERGER. That does not include interest on debts?

Mr. THOM. It does not include fixed charges.

Mr. SHALLENBERGER. Is the property statement a larger amount than the outstanding capital stock of the railroads?

Mr. THOM. I suppose that would differ in various roads, and you have just got to get some standard, and I know of no other. I would be perfectly willing to accept any other legitimate standard, but I know of no other but that, and that has no relation to or influence on rates whatever.

The CHAIRMAN. Are you through?

Mr. SHALLENBERGER. Yes; Mr. Chairman.

Mr. HOCH. Colonel, you spoke of the proposition of the commission keeping itself informed as to the amount that was paid for these additions and betterments, and not keeping track of the costs.

Mr. THOM. Not what?

Mr. HOCH. Not keeping track of the costs.

Mr. THOM. I think that is involved in what I said.

Mr. HOCH. I notice that the commission's language in its proposal, after using some of the same language that you have, also uses costs of all additions and betterments.

Mr. THOM. That would be perfectly satisfactory to me. I regard that as a "change in investments" expressed in my draft. I think that that is what is meant, but at the same time, what you suggest would be perfectly satisfactory to me. I am not trying to make any difference in that respect.

The CHAIRMAN. Are there any other questions?

Mr. HUDDLESTON. Mr. Chairman, I have another question.

The CHAIRMAN. Mr. Huddleston.

Mr. HUDDLESTON. I want to ask with reference to the clause you propose—the amendment proposing the refunding of the amount recaptured.

Mr. THOM. Repayment of it, you mean?

Mr. HUDDLESTON. Yes. It seems to contemplate not the repayment of the amount to those who have paid it in, the exact amount which they have paid, but a division of the fund among them pro rata. That has in mind, I suppose, some earnings that this fund has acquired.

Mr. THOM. That is it exactly. The commission has had it at interest.

Mr. NELSON. The suggestion is the other way.

Mr. HUDDLESTON. What is that?

Mr. NELSON. The suggestion that the chairman made is the other way, that these moneys were invested in Government bonds, which are at present considerably below what they were when they were purchased, and we do not have as much in the fund as was paid in.

Mr. THOM. If there is a depreciation of the value of the securities, the roads would only get pro rata distribution.

The CHAIRMAN. Mr. Mapes makes a suggestion here. What would you do with the cost of administration?

Mr. THOM. I do not think that there has been any.

The CHAIRMAN. If there are no further questions, we are much obliged to you, Mr. Thom.

Now, I have a letter from Mr. Eastman, in which he says that he can not be here Thursday. I had intended for him to close the hearings, but he says he can not possibly be here Thursday or Friday. So, I have notified him to be here Tuesday.

And now, the electric lines and Mr. Oliver wants to be heard for the security holders, and Mr. Noxon wants some time, and we will probably want Mr. Lewis here, since Mr. Thom raises this question of the repeal of valuation entirely, and in the four days of next week, we have got to crowd all of you gentlemen in, somehow, and close the hearings on next Friday, certain, so we will hear Mr. Eastman, then on Tuesday morning, and the committee will now stand adjourned except for an executive session. Mr. Milligan has a statement that he wishes to make.

## STATEMENT OF JOHN PHILIP HILL, BALTIMORE, MD.

Mr. HILL. Mr. Chairman, may I have five minutes, before you close the hearings?

The CHAIRMAN. We will try to get you in. You represent the security holders in general?

Mr. HILL. The security holders, certain stockholders in Baltimore.

The CHAIRMAN. We will try to get you and Mr. Oliver in about the same time.

Mr. HILL. I want about five minutes.

The CHAIRMAN. The committee will now stand adjourned.

(Thereupon, at 12.35 o'clock p. m., the committee adjourned to meet the following Tuesday, February 9, 1932, at 10 o'clock a. m.)

## RAILROAD LEGISLATION

TUESDAY, FEBRUARY 9, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D. C.

(The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

Mr. Commissioner, when you are ready, you may proceed.

STATEMENT OF HON. JOSEPH B. EASTMAN, COMMISSIONER  
INTERSTATE COMMERCE COMMISSION—Resumed

Commissioner EASTMAN. Mr. Chairman, I have some statements here, containing information which I would like to present to the committee at this time.

When I came up here the first time, I had a great deal of detailed information with me that I did not present to the committee. I did not know just what it was that you would want. But, after reading over the transcript of the hearings, certain matters have, it seems, developed upon which there is a desire for detailed information, and I may say that the commission wishes to give the committee all the information in its possession that will be helpful.

Now, in the first place, I have here a statement showing payments by carriers on account of excess net railway operating income which have already been made into the fund. This statement is in two forms. I have one form which is mimeographed, and of which I have enough copies for all of the committee, which shows each carrier and the amount which it has paid. After that was prepared, it occurred to me that it might be of interest to the committee if we should further identify these carriers, so far as possible. This other form, therefore, shows in each case the class of carrier, whether 1, 2, or 3, and also shows whether it is controlled by an industry and, if so, what that industry is. When I say controlled by an industry, I should explain that we have endeavored to include all cases where the carrier was affiliated with an industry, as well as legally controlled by direct ownership of stock. This form of statement contains all of that information which we are able to secure.

Mr. HUDDLESTON. Mr. Eastman, may I ask, do you feel that there is a difference in principle applicable to the carriers controlled by an industry and to those that are supported by the general public?

Commissioner EASTMAN. No. They are all supported by the general public, as a matter of fact, but I think that it is of interest to note that a great many of these carriers which we believe to be in the recapture class are controlled by industries.

Now, a little later I am going to say something about that matter of industrial control of railroads.

Mr. HUDDLESTON. I do not want to anticipate what you have in mind.

Commissioner EASTMAN. Perhaps I can take it up better in another connection.

I have these various statements for all of the members of the committee, but several different ones are included in each set, and perhaps I had better explain them a little before I turn them over.

I may say that Congressman Nelson of Wisconsin called for certain information and some of these statements which we have prepared were in response to his request.

One of the statements which he desired was a list of railroads for which recapture hearings have been held or are in progress or are assigned, or on which reports have been served. This statement shows that information, and I have copies for all members of the committee. While I am on that point, I may state that there is in the mind of some, I think, a misapprehension as to the amount of work which has been done by the commission with respect to recapture.

I have here a statement from our bureau of valuation to the following effect:

Mr. Benton advised the committee that the commission has barely scraped the surface so far as recapture is concerned, and that for only 2 per cent of 425 cases, involving only \$1,027,973, or three-tenths of 1 per cent of the total, has the commission "got ready to make demand." He said that these figures were taken from the statement which I presented. I do not know whether Mr. Benton is quoted correctly or not.

#### STATEMENT OF MR. JOHN E. BENTON—Resumed

Mr. BENTON. Mr. Chairman, I think that I should interject this, that in my statement I meant final demand, and not the preliminary statement upon which a hearing is based. I meant complete recapture decisions, I think that my statement will show that to the committee.

I say that for the information of Mr. Eastman.

Commissioner EASTMAN. The bureau goes on to say that every tentative report served is a demand for payment, although the amount may be modified after hearing if a protest is filed. There have been 97 tentative reports served to date, calling for payment of over \$25,000,000, and reports have been practically completed in 23 other cases involving recapture of \$26,000,000. This indicates the progress that is being made.

I have here a statement which is kept current by the Bureau of Valuation, called a progress chart, of recapture proceedings which shows in the case of each road the progress which is being made on that particular road. As the work goes on, the chart is filled in with this solid color (exhibiting chart), so that we have a graphic indication of how much work has been done in each particular case. I shall be glad to leave that chart here for the inspection of the committee.

The CHAIRMAN. Mr. Commissioner, what would be your estimate of the percentage of completions.

Commissioner EASTMAN. Well, I can not give that off-hand. I am going to give you, a little later, some estimates as to the amount of time which would be required to complete the work.

In this same memorandum from the Bureau of Valuation reference is made to the testimony of Mr. Holton, vice president of the Interstate Railroad. The comment is as follows:

Mr. Holton made the following statement before the committee: "From our experience to date we feel that it will cost the railroads of the United States, and the Government, in expenses for litigation, almost, if not as much, as could ever be recaptured." Mr. Holton is referring to the hearing on the protest of the Interstate Railroad. The experience of this company is by no means representative as the hearing has, in our opinion, been unnecessarily protracted. It had consumed 56 days up to January 20, instead of 69 as stated by Mr. Holton, as contracted with the average time of 4.7 days required for all cases so far heard under the tentative report procedure. Of the 53 hearings held on protests, 49 have taken 10 days or less and only two more than 20 days."

Of course, the time required depends to a considerable extent upon the size and complexity of the road.

Mr. Holton also stated that his company has only earned an average of 5.5 per cent on its investment during its 32 years of operations and that the highest return in the recapture years was 6.10 per cent in 1920. On the commission's base the return for the last 10 months of 1920 was over 9 per cent. From figures furnished by Mr. Holton it appears that the Interstate paid out in dividends \$3,460,000 during the years 1920 to 1927, inclusive, the minimum rate being 4 per cent in 1923 and the maximum 7.5 per cent in 1925, 1926, and 1927. According to the tentative report excess income was received during this period, except in 1921 and 1924, amounting in all to \$793,384, of which \$396,692 is the amount in issue in the present hearing.

Some question has arisen in the course of the hearings as to when demand is made by the commission upon these carriers and as to when they receive notice of our claim against them. Now, so far as our estimates are concerned, of course, they receive no notice that we have estimated a certain amount is due. They first receive formal notice under the present procedure when a tentative report is served on them containing proposed findings of fact, by division 1, and conclusions thereon. To that tentative report they have an opportunity to protest.

I have in my hand such a tentative report in the case of the Warrenton Railroad, which was represented here before you. Apparently Congressman Kerr, who spoke for that railroad, was under the impression that demand had been made upon the carrier as early as 1923. Now, the date of this tentative report is January 22, 1927.

It is true that company has made voluntary payments into the fund, but it received no legal, formal notice of the claim of the commission until this tentative report was served in January, 1927, if I understand the situation correctly.

Now, I have here a statement which was called for by Congressman Nelson of Wisconsin, but which I intended to present in the committee in any event. However, it contains information which it has not been the custom of the commission to make public.

The CHAIRMAN. Mr. Commissioner, right there, there seems to be some confusion in the committee. Mr. Nelson of Maine is a member of the committee.

The commissioner is talking about a letter from Mr. Nelson of Wisconsin, a letter which Mr. Nelson of Wisconsin wrote him to inquire as to various facts.



Commissioner EASTMAN. Yes, requesting certain information bearing on this matter.

As I say, this particular statement contains information which it has not been the custom of the commission to make public. Therefore, we have not forwarded it to him, but I intend now to furnish it to the committee, and if the committee desires to make it public we have no objection whatsoever. The reason that we did not ourselves make it public is because it is composed very largely of mere estimates of amounts due from each road under the recapture provisions of the law. Those estimates, as I explained in my previous testimony, are necessarily rough in a great many cases. The whole matter in each instance is subject to public hearings, and eventually to a formal finding by the commission, and we have never felt that we ought to give out mere estimates based on tentative information in advance of the formal proceedings, because they might, in many instances, be misleading. But if, knowing the infirmities of these estimates, you wish, for the purpose of this proceeding, to make them public, we have no objection whatsoever to offer to that.

Now, this statement which I have before me shows every road which we estimate may have a recapture liability for the period from 1920 to 1930, inclusive. It also shows for purposes of information the net income in 1920, 1929, and 1930, and the total corporate surplus at the end of 1920, 1929 and 1930.

It is divided into groups of carriers: Class 1 carriers, class 2 carriers, class 3 carriers, and switching and terminal carriers, and in the case of each group the roads are arranged in order of the amounts found due, the largest being shown first.

I may say that since I presented my estimate of the total recapturable amount of about \$378,000,000, this statement has been further checked by the men that prepared it. It was rather hastily prepared previously, so far as, particularly, the years 1928, 1929, and 1930 were concerned, and certain errors have been discovered in that rechecking which reduces the \$378,000,000 to \$361,465,815. Of that amount, class 1 carriers account for \$336,443,378; class 2 carriers \$15,929,742; class 3 carriers \$2,259,036; class 4 carriers \$6,833,659. Class 4 carriers are switching and terminal carriers.

Attached to the statement is a paragraph showing how the recapture liability has been estimated. It is brief, and I want to read it.

When information in the files of the commission permits, recapture liability has been based upon a value determined by according full weight to original cost of structures, estimated if not known, and their cost of reproduction, with depreciation deducted and value of land and working capital added. If this information is not available, the value is found by adding to the single sum value, less working capital, shown in the final or tentative valuation reports under section 19a, the net cost of additions and betterments with adjustments for property changes from year to year, plus working capital not in excess of the cash and materials and supplies as reported by the carrier. In the absence of any basic valuation data, book investment less depreciation is taken as the estimate of value. Generally the carrier's reported net railway operating income has been used in these computations.

Now, the best of my information is that the more imperfect estimate of value, that is, the one which brings the basic valuation up to

date by net additions and betterments at cost since that time, has been used in the majority of instances covered by this statement. That, of course, is the method which was rejected by the Supreme Court in the O'Fallon case. To show you what changes might be made if the method followed in the Richmond, Fredericksburg & Potomac case had been used in such estimates, our men made a special check of the Seaboard Air Line and the Florida East Coast, each of which roads is shown in this list to have an estimated recapture liability of a little more than a million dollars. Now, if value had been determined in the same way as was done in the Richmond, Fredericksburg & Potomac case, our men believe that the liability in the case of each of those two roads would have been wiped out.

In going over the testimony, which I have had an opportunity to read in part, I have noted that certain other information in connection with these estimates of recapture liability may be desired by the committee. This statement shows the total which is estimated for the entire period of 11 years. It is not divided by years. It may be of interest and use to you to have a statement which breaks that total for each road down into the amount for each year, showing also for what years no liability is estimated. I have asked our valuation department to prepare such a statement. It may take about a week to make it up. Of course, it will be quite a lengthy statement.

Now, the question has arisen also as to what the result would be if you took the 11-year period as a whole and offset the excess in certain years by the deficiency, if any, in others. I have asked our men to work on that and see whether they can give estimates for each road on that basis. They tell me that they are not certain that that can be done, but they are looking into it and will see what information can be procured of that sort. It can be done in the case of certain roads, but whether it can be done in the case of all, I am not now sure.

In response to a request from Congressman Nelson, a statement has been prepared, showing for each of the roads controlled by the United States Steel Corporation, which are estimated to have a recapture liability, the dividends which have been paid during the period. The statement also shows the net income in each year and it shows the total corporate surpluses in each year as of December 31.

Mr. NELSON. That is Congressman Nelson of Wisconsin?

Commissioner EASTMAN. Yes, sir.

Mr. CROSSER. What years does that cover?

Commissioner EASTMAN. 1920, and on down to 1930.

Another statement also shows similar information as to the so-called coal roads, that is to say, the Chesapeake & Ohio, Hocking Valley, Norfolk & Western, and Virginian.

I have another statement which was not given to him, because it shows the estimated recapture liability as well, in the case of each of these roads. As I have said, that is information which it has not been our practice to make public, but which we are furnishing to the committee to make public if it so desires.

In the case of the steel roads, some interesting things are shown. In the case of the Bessemer & Lake Erie, the dividend paid on common stock ranged from 150 to 500 per cent.

In the case of the Birmingham Southern, no dividends were paid. No dividends were paid by the Carbon County or the Donora Southern.

The Duluth & Iron Range paid dividends each year ranging from 15 to 25 per cent.

In the case of the Duluth, Missabe & Northern, they ranged from 75 to 100 per cent.

The Elgin, Joliet & Eastern paid from 4 to 6 per cent.

No dividends were paid by the Etna & Montrose, Hannibal Connecting, Johnstown & Stony Creek, and Lake Terminal.

In the case of the Newburgh & South Shore, none were paid from 1920 to 1924, but since 1925 they have run from 3 to 6 per cent.

I might say that these figures do not show the results for 1931, which are not yet available.

Mr. HUDDLESTON. Does that mean that the dividends were not earned, or that they were retained as surplus?

Commissioner EASTMAN. Well, in some cases they were not earned. Looking through the net-income figures, you will find that in many instances there were deficits for the year, while in other cases there were earnings which might have been paid out in dividends.

There were no dividends paid by the Northampton & Bath.

In the case of the Union Railroad (Pittsburgh, Pa.), which is a terminal property, none were paid in 1920, but thereafter they ranged from 10 to 25 per cent.

The Youngstown & Northern paid none.

In the case of the Chesapeake & Ohio, dividends were paid in each year, and I might run these down for you: 1920, 4 per cent; 1921, 2 per cent; 1922, 4 per cent; 1923, 4 per cent; 1924, 4 per cent; 1925, 4 per cent; 1926, 12 per cent; 1927, 9½ per cent; 1928, 10 per cent; 1929, 10 per cent; 1930, 10 per cent.

For the Hocking Valley, 1920, 4 per cent; 1921, 2 per cent; 1922, 4 per cent; 1923, 4 per cent; 1924, 4 per cent; 1925, 4 per cent; 1926, 12 per cent; 1927, 9½ per cent; 1928, 10 per cent; 1929, 10 per cent; and 1930, 8½ per cent.

The Norfolk & Western paid in 1920, 7 per cent; in 1921, 7 per cent; in 1922, 8 per cent; in 1923, 8 per cent; in 1924, 8 per cent; in 1925, 8 per cent; in 1926, 10 per cent; in 1927, 10 per cent; in 1928, 10 per cent; in 1929, 12 per cent; and in 1930, 12 per cent.

Now, I might say in fairness to the steel roads which paid those excessive dividends, that the information indicates that those roads are very much undercapitalized in comparison with the value of their property. For example, the Bessemer & Lake Erie in 1920 had \$500,000 common stock and bonds in the amount of \$11,180,000, or a total capitalization of \$11,680,000, as compared with our estimated value of \$56,125,000. Apparently its property has been paid for quite largely out of surplus, and it has also been reducing its bonded indebtedness continually. The stock has remained the same, so that in 1930 the figures for the stock show \$500,000, bonds \$2,355,000, or a total capitalization of \$2,855,000, as contrasted with our estimated value of \$51,033,636.

So, you see that the large dividends paid on stock are, if translated into earnings on the estimated value of the property, not anywhere nearly so great in percentage.

Mr. BECK. Do you have similar figures, Mr. Eastman, for the Virginian?

Commissioner EASTMAN. No; I do not have those. I have them for the Norfolk & Western, which I am going to give to you. We can get that for all of the roads, if you desire.

Mr. BECK. No; I do not desire to ask for it.

Commissioner EASTMAN. In the case of the Duluth, Missabe & Northern—

Mr. HUDDLESTON. Before you leave those roads, is their stock all owned by the steel corporation?

Commissioner EASTMAN. That is my understanding. Certainly it is entirely controlled by the steel corporation. Sometimes in the case of these industrial railroads they put the stock in the hands of officers or affiliated interests, but there is no doubt as to actual absolute control and I think in this case the stock is owned directly.

In the case of the Duluth, Missabe & Northern, in 1920, the common stock was \$4,112,500, the bonds \$10,319,000, a total of \$14,431,500, as contrasted with our estimated value of \$65,100,000. That road, too, has been reducing its bonds, so that in 1930 it had stock of \$4,112,500, bonds \$4,567,000, or a total of \$8,679,500, as compared with our estimated value of \$74,645,997.

So again, the dividends on stock if translated into earnings on value would be very much less.

Now, somebody in the course of the hearings, some member of the committee, I think, expressed a desire to know the comparison between the capitalization of the Norfolk & Western and our estimated value, and I have those figures here. They start, for some reason, with 1922. I do not know why.

In 1922, the common stock amounted to \$127,826,900; preferred stock \$22,992,300; bonds \$103,217,700, or a total capitalization of \$254,036,900, as compared with our estimated value of \$323,000,000.

In 1930, the common stock amounted to \$140,648,300, preferred stock \$22,992,300, bonds \$111,995,532, or a total of \$275,636,132, as compared with our estimated value of \$396,195,321. In the case of all of these roads which I have mentioned, I want to emphasize again that those value figures are estimated figures and there has been no ultimate finding. I think tentative reports have been served on both the Norfolk & Western and the Bessemer & Lake Erie.

Now, while I am on the steel roads—

Mr. CROSSER. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Crosser.

Mr. CROSSER. Mr. Commissioner, do you have the figures on the Newburgh & South Shore?

Commissioner EASTMAN. Newburgh & South Shore?

Mr. CROSSER. Yes.

Commissioner EASTMAN. Not those capitalization figures.

I might say in the case of the steel roads, that there are certain other roads controlled by the steel corporation which we do not estimate to be in the recapture class. These are the Chicago, Lake Shore & Eastern, the Monongahela, the Essex Terminal, the Interstate Transfer, the McKeesport Connecting, the Mercer Valley, the Monongahela Southern, the St. Clair Terminal, the Spirit Lake Transfer, and the Youghiogheny Northern.

Mr. CROSSER. How about the Newburgh & South Shore? I am curious to know whether it is owned altogether by the steel company.

Commissioner EASTMAN. My information is that it is controlled, directly or indirectly, by the United States Steel Corporation. I want to say this, in fairness to the steel roads, and these are matters

to which my attention has been called by counsel for those roads, that the freight rates or divisions on which they have been making these earnings have largely been fixed by the commission.

In the case of the iron-ore rate from the ranges in Minnesota to the upper Lake ports, that is to Duluth and Superior, the rate was fixed in 1915 in *Lum v. Great Northern*, 33 I. C. C. 501, at 55 cents per gross ton. That rate was increased in the 15 per cent case of 1917, and in June, 1918, under Federal control it was advanced to \$1. In the 1920 increased rate case, the commission made no increase in that rate of \$1. In the reduced rate case of 1922, no order was entered requiring a reduction in that rate, because it had not been advanced in 1920. But the commission apparently took it up informally with the company at that time and a reduction was made, first to 90 cents and then it was modified to 91 cents. Later in *Adriatic Mining Co. v. Chicago & N. W. Ry. Co.*, 78 I. C. C. 611, the commission found this 91-cent rate, which included the charge for the dock service, not unreasonable, unduly discriminatory, or unduly prejudicial or preferential. That was a decision by a division of the commission, and in that connection, I want to point out this further fact to you, that that case included not only the ore rates charged by the Duluth, Missabe & Northern and the Duluth & Iron Range but also the rates charged by the Great Northern. As I recall it, the haul of the Great Northern is longer than in the other instances, and too much of a reduction in the rates of these steel roads would have had a very adverse effect upon the Great Northern. That illustrates the difference between a rate charged by a company which is engaged in general railroad business and one which specializes. If the Great Northern makes any more than a normal profit on iron ore it is a great help to it in its general operations. It helps it in making rates which carry grain, for example. Of course, where a road is controlled simply by an industry, and serves that industry almost exclusively, there is no such distributing effect as that.

Now, in the case of the Bessemer & Lake Erie, counsel informs me that the rates on iron ore from Lake Erie ports to the blast furnaces in the middle steel producing district were fixed by the commission in the Iron Ore case, 41 I. C. C. 481. They have since been changed by the general increases and reduction.

In the case of the divisions received by the short line railroads controlled by the Steel Corporation, counsel states that these divisions have been computed strictly in accordance with the formula of the commission in the *Chicago & West Pullman* case, and in many cases have been specifically fixed by the commission itself. They were fixed in what we call the industrial railroad cases, where we endeavored to reduce the divisions received by many of these industrially-controlled terminal railroads. And you will notice from the list that I offered that the great earnings of the steel-controlled roads are not by those short terminal roads.

In the case of the Bessemer & Lake Erie which pays the largest dividends, that road operates under unusually favorable conditions. It handles traffic of the United States Steel Corporation in and out of Pittsburgh, and it consists in large part of iron ore moving down to Pittsburgh and they use the same cars for the transportation of coal in the reverse direction to the Lake Erie ports. That makes a shuttle movement, and the results from that operation show what

can be accomplished when you have a movement of that sort and a concentrated tonnage.

Now, if the rates of the Bessemer & Lake Erie should be reduced, the tendency would be to attract iron ore traffic to that road to the exclusion of other roads reaching Pittsburgh, notwithstanding that those other roads do not have the same concentrated tonnage that exists in the case of the Bessemer & Lake Erie, which shows the considerations which have to be taken into account in fixing rates.

I said to Congressman Huddleston that I wanted to say something about industrially-controlled railroads. I have always, myself, been a strong believer in the principle that railroads should not be allowed to control industries and that industries should not be allowed to control railroads.

The commodity clause in the Interstate Commerce act reads, in terms, that railroads shall not be allowed to control industries which they serve. That is not the precise wording, but that is the effect of it. It does not say specifically that an industry shall not be allowed to control a railroad. We believe that the fair interpretation of that clause is that it applies where the industry controls a railroad as well as where the railroad controls the industry, and we have been trying to get that question tested out in the courts. At our request the Department of Justice has brought suit under the commodities clause in the case of the Elgin, Joliet & Eastern, which is controlled by the United States Steel Corporation. That will afford a test case, which will determine how that law ought to be interpreted as applied to such a situation as that.

MR. HUDDLESTON. Mr. Eastman, can you tell us what percentage of the earnings of the Bessemer & Lake Erie come from the traffic of the steel corporation?

Commissioner EASTMAN. I can not, but I have no doubt that it is a very large percentage. I think they handle traffic also for various of the competing companies operating in Pittsburgh, and, of course, their coal traffic moving northbound is traffic for the coal producers not directly associated with the steel corporation.

MR. HUDDLESTON. The steel corporation also has a coal operation in that section.

Commissioner EASTMAN. I do not know as to that. They may have an interest in coal mines, probably do. I have no particular knowledge of that. If I have had any, I have forgotten it.

MR. HUDDLESTON. With reference to the iron ore handled from the Missabe Range, to the lake ports, that is carried by the—

Commissioner EASTMAN. By the Duluth, Missabe & Northern and by the Duluth & Iron Range.

MR. HUDDLESTON. Can you tell us what percentage of that traffic comes from the steel corporation?

Commissioner EASTMAN. This memorandum which counsel for the steel corporation gave me says that the principal revenue of the Duluth, Missabe & Northern is derived from the iron ore traffic.

I think a certain percentage of that traffic is carried for independent steel companies, that not all of it is carried for the United States Steel Corporation. But my impression is that the great bulk of it is carried for the Steel Corporation.



Mr. HUDDLESTON. I am familiar with the Birmingham & Southern. It does practically no business for the public. I should say above 95 per cent of its business comes from the steel corporation.

Commissioner EASTMAN. Well, the Birmingham & Southern has not been a big earner. In fact, it has shown deficits in income, according to this statement, more often than it has shown profits.

I have a statement here that Mr. Woodrow has just furnished me, indicating that about 90 per cent of the traffic of the Missabe is iron ore traffic.

I wanted to mention this, which is on another side of the Steel Corporation question. If they received relief from recapture, it may be that they might be able to deal more generously with the railroads in the matter of steel rails. Steel rails are one of the items which railroads buy on which the price has remained constant ever since, I think, 1923. There has been no reduction in the price of steel rails furnished to the railroads. That is one of the reasons why the cost of reproduction of the railroads tends to remain up.

The commission has referred that matter to the Department of Justice for investigation under the antitrust statutes.

With respect to the matter of comparisons between estimated values and capitalizations, the question came up in connection with Mr. Fulbright's testimony as to what the comparison was between the capitalization and the book investment account of the Nickel Plate and our estimated value.

Again I say that the estimated value is a rough, imperfect figure, on which there has been no final finding.

In 1920 the book investment in road and equipment, deducting depreciation, covering both the operating and the lessor companies and not including working capital, was \$71,513,143. The capitalization of the operating road, not including the lessor companies, was \$67,307,300. Our estimated value was \$51,739,519.

Now in 1930 the similar figure for investment in road and equipment was \$218,270,713; the figure for capitalization was \$228,151,160; and our estimated value was \$150,546,971.

In the case of both the coal roads and the steel roads, the figures which we have seem to show that even if the net result was taken for the 11-year period there would still be a recapture liability in many instances. The Bessemer & Lake Erie has an estimated recapture liability for every year in the 11-year period except 1921. The Birmingham & Southern has an estimated liability in 6 out of the 11 years. The Carbon County, in 6 of the 11 years; the Duluth & Iron Range, in 5 of the 11 years; Donora Southern, in 3 of the 11 years; the Duluth, Missabe & Northern, in all of the 11 years; the Duluth & Iron Range, in 5 of the 11 years; the Elgin, Joliet & Eastern, in every year, except 1930; the Etna & Montrose, only in 1925 and 1926; the Hannibal Connecting, in 4 of the 11 years; Johnstown & Stony Creek R. R., only in 1921 and 1922; the Lake Terminal, in 3 of the 11 years; the same in the case of the Newburgh & South Shore; of the Northampton & Bath, in 6 of the 11 years; the Union Railroad of Pittsburgh, in 6 of the 11 years; the Youngstown & Northern, in 1922 and 1926 only; the Chesapeake & Ohio, in every year except 1921 and 1922; the Hocking Valley in every year except 1921, 1922, and 1923; the Norfolk & Western, in every year except 1920, 1921, 1922, and 1923; the Virginian, in every year.

Mr. MAPES. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. When you speak of the steel-controlled roads or steel-owned roads, what do you mean?

Commissioner EASTMAN. Well, I have been referring to those which are controlled, directly or indirectly, by the United States Steel Corporation. There are others which are controlled by the Bethlehem Steel Co., and by other independents.

Mr. MAPES. They own the bulk of the stock in those roads?

Commissioner EASTMAN. They either own or control the bulk of the stock. As I say, in the case of these railroads which are affiliated with industries, there is sometimes a tendency to escape the possible effect of the law, by not having the stock directly owned by the industry, but instead to have it, perhaps, owned by officers of the industry, or some such arrangement as that.

Mr. MAPES. They are what you class as industrial-owned roads, or controlled roads?

Commissioner EASTMAN. We call them industrial railroads.

Mr. MAPES. Some of them are considerable railroads?

Commissioner EASTMAN. Yes. Well, the outstanding examples of that are the Bessemer & Lake Erie, the Duluth, Missabe & Northern, and the Elgin, Joliet & Eastern.

For a time the Ford Co. controlled the Detroit, Toledo & Ironton, which is a comparatively large road.

Mr. HUDDLESTON. Mr. Eastman, may I recur to your statement concerning the price of steel rails?

How do the prices that are being charged for steel rails compare with foreign prices, both in fluctuation and in amount?

Commissioner EASTMAN. I do not have that information. I know that in the information which we checked on that subject, it was shown that the price of steel rails, and I think other track material, had remained constant, whereas in the case of other steel articles, there had been a decided decrease in the price.

Mr. HUDDLESTON. Would you object to giving us your idea on why there has not been more fluctuation in those prices?

Commissioner EASTMAN. Well, we referred it to the Department of Justice, in order that they might investigate whether there was anything in the nature of a conspiracy among the companies to maintain the price. Now, we do not have any information on that matter ourselves, and I would not undertake to express an opinion on it.

I have been told that the president of the steel corporation states the reason is the immense amount of research which has been done by the steel companies in developing excellent steel rails which will sustain the modern heavy equipment, and that he is rather astonished at his moderation in the matter of prices; but that again is gossip, as far as I am concerned.

Mr. HUDDLESTON. The steel corporation originates a vast amount of railroad business. I am wondering whether that fact cuts any figure on the price of steel rails.

Commissioner EASTMAN. Well, I think this is true, generally speaking, that the freight rates on iron and steel articles are relatively high, compared with many other freight rates. They are, in general, profitable rates for the railroads. Whether that has any bearing on

the matter, I do not know. The railroads are also great purchasers of iron and steel articles, one of the most important purchasers.

Mr. HUDDLESTON. What supervision, if any, does the commission exercise over the purchase of supplies?

Commissioner EASTMAN. It has no supervision under the law over the matter of supplies, except that it can investigate any matter connected with the management and operation of the railroads, the case of such matters as it has no direct control over, it can only express its opinion and inform Congress as to the situation, both Congress and the public generally.

Mr. HUDDLESTON. What percentage of operating income is spent for supplies?

Commissioner EASTMAN. I could not give you that, offhand. I can endeavor to look that up.

Mr. HUDDLESTON. Would it be something like 40 per cent?

Commissioner EASTMAN. It would not surprise me, if you include coal.

Mr. HUDDLESTON. Of course, I do include coal.

May I ask whether the same condition exists in other items of supplies, which you have pointed out in steel?

Commissioner EASTMAN. Not so far as I am aware, except that we have an investigation under way now into the prices paid by the railroads for coal. There seems to be a tendency on the part of the roads which are located in the coal districts to pay rather favorable prices for coal. I think that the argument that they give in support of that practice is that it helps the industries along their lines; but you will find instances where railroads on which the coal mines are located are paying higher prices for coal, sometimes considerably higher, than other roads are paying for coal from the same district.

Mr. HUDDLESTON. I have observed that.

Commissioner EASTMAN. That is a matter we have under investigation in ex parte 104 at present.

Mr. HUDDLESTON. I have observed that coal orders are frequently apportioned by the carriers among the mines on an arbitrary basis, and at a price fixed to keep the mine alive, whether it be a high-cost or a low-cost mine, or good coal or bad.

Commissioner EASTMAN. Well, I think their argument is this, that the railroads are such tremendous purchasers and steady consumers of coal, that contracts from them are very valuable contracts to secure, so that if the railroads placed their contracts as a result of competitive bidding, what the lowest bidder would be willing to take would tend to depress the price of coal throughout the district unduly.

Mr. HUDDLESTON. Is there any practice in the whole field of railroad supplies of letting contracts to the lowest bidder?

Commissioner EASTMAN. I think that is done in the case of equipment generally.

Mr. HUDDLESTON. You mean in the purchase of cars?

Commissioner EASTMAN. Cars.

Mr. HUDDLESTON. And engines?

Commissioner EASTMAN. Yes. I am not certain as to that, but that is my impression, that usually bids are secured for cars and engines. Now, I am not so clear that that is done in the case of construction contracts. I think that very often bids are secured for construction contracts, but that the railroads do not always follow

the practice of awarding the contract to the lowest bidder. They have certain contractors that they know, from experience, are reliable and dependable, and they may favor those in awarding the contracts.

I am not speaking from any investigation, now, and for that reason my comments ought not to be given too much weight.

Mr. HUDDLESTON. With items of coal, lumber, steel rails, and other similar items, you know of no system of contracting to the lowest bidder?

Commissioner EASTMAN. I do not think that there is any general, recognized, and established practice in that respect. It often is done; on other occasions, it is not done.

I think bids are secured for these steel rails. I am not certain as to that. I think they are, but that the bids are always the same.

Mr. HUDDLESTON. The price is made by the Steel Corporation, and the others have to follow it. That is a very simple situation there.

Commissioner EASTMAN. Well, there are many independents.

Mr. HUDDLESTON. Yes; but they have to follow the big concerns or they can not live. Unless they do follow, they can not stay in business. There is no real competition.

Commissioner EASTMAN. Now, I think that I have covered the statements of which I have copies for all the committee members, and those are available here, if you care to distribute them.

The CHAIRMAN. Do those contain the information that you said the commission was not in a habit of making public, or is that in this separate volume which you have lying here?

Commissioner EASTMAN. It is in there; the statements to which I referred is the one headed Statement of Estimated Recapture Liability of Railroads for the Period 1920-1930, Grouped by Classes, With Total Corporate Surplus as of December 31, 1920, 1929, and 1930, and Net Income for those Years.

Now, I have certain other information here which has been prepared at considerable labor by our bureau of statistics and which I thought might be of interest to you. This statement has not been mimeographed, although I have two carbon copies.

I took the roads which our estimate showed to have a recapture liability in excess of a million dollars, and I asked our bureau of statistics to prepare information showing the dividends declared during the period by each of those railroads. This statement includes that information. It also shows for every year the net railway operating income; the total capital stock; the net income; the percentage of net income on capital stock; and then, for 1930 and 1931, it shows the net railway operation income; the other income; the total income; the fixed charges, and the ratio of total income to fixed charges. It also shows the corporate surplus in 1920, 1929, and 1930.

In going over those statistics, you may perhaps be misled if you do not bear this fact in mind, that in addition to showing the figures for a particular road they also include the figures for each of its principal subsidiaries. However, the dividends paid by those subsidiaries go to the parent company, so that the statistics of the latter are the ones to which you should direct your principal attention.

The index will show which are the parent companies, with the exception that there is an error in the case of the Richmond, Fredericksburg & Potomac and the St. Louis-San Francisco. They are indicated as subsidiaries of the Reading, which is, of course, incorrect.

This statement includes two companies which our present figures show are not in the million dollar class. They were in the million dollar class in our former estimate. Those two are the Great Northern and the Southern Pacific, and in the corrected figures they have dropped below the million dollar class. It does not include two which should have been included, and I shall be glad to furnish you the figures for those. One is the Delaware, Lackawanna & Western, and the other is the Denver & Rio Grande Western.

You will find a great variety of results shown in these figures. You will find companies that have paid very large dividends, companies which paid moderate dividends, and a good many companies which paid no dividends at all.

I shall be glad to furnish this statement for whatever the committee may wish to do with it.

Mr. HOCH. Mr. Chairman, is it contemplated that tables such as that will appear in the printed hearings, or are they simply submitted for the information of the committee outside of the print?

Commissioner EASTMAN. There is no reason why you should not have that information, as it is public information taken from the public records of the commission. I do not know whether you want to print it all in the record, but it is available for whatever use you care to put it to.

Mr. HOCH. That is my question, whether it will go in the print.

The CHAIRMAN. If it is so desired, they may go in and will be available. I should think that they may go in the hearings.

Mr. HOCH. I rather think so.

The CHAIRMAN. We will have that incorporated.

Commissioner EASTMAN. Similar information can be prepared for every company on the list, but it would require a terrific amount of work, as you can see. That statement there includes only the companies for which our estimates showed recapturable income in excess of a million dollars; but it includes, I think, about \$330,000,000 out of the total of \$361,000,000.

In the course of his testimony Mr. Bledsoe filed a statement indicating the return in each year, for the railroads throughout the country as a whole, on the value which we used in 1920 in the increased rate case, brought down to date by net additions and betterments at cost since that time, and Colonel Thom, in his testimony, referred to certain similar figures for individual years in the case of the eastern and southern groups. Now, I have gone over those figures which Mr. Bledsoe furnished, and they do not quite compare with figures prepared by our bureau of statistics.

I do not know what the reason for discrepancy is. It is not large. For example, in 1921, our return is 3.19 per cent. I think his was 3.13.

In the case of the eastern group I think Colonel Thom said that there was only one year in which the railroads earned more than 5% per cent. Our figures, on the basis of that 1920 valuation brought down to date, show that in 1926 the return in that group was 6.08; in 1929, 6.04; and in 1928 it was 5.71, or very nearly up to the 5% per cent.

In the case of the southern region, our figures show that the 5% per cent was exceeded in 1925, when the return reached 6.23 per cent. In 1926 it was 5.74.

I shall be glad to put those figures in the record for the country as a whole, and for the eastern, southern, and western groups separately.

These are estimates prepared by our bureau of statistics on three different bases. One base is the investment accounts of the carriers at the end of each year, including material and supplies and deducting accrued depreciation.

The second base is our primary valuations under section 19a brought down to date by adding subsequent net additions and betterments at cost, which is practically the O'Fallon method. That shows the largest returns of all.

The third base is the one used by Mr. Bledsoe and Colonel Thom, which takes our 1920 valuation for the roads as a whole, or by groups, and brings that down to date by subsequent net additions and betterments at cost.

Probably the discrepancy can be explained in some way, but I introduce those tables here.

(The matter referred to is as follows:)

*Net railway operating income, investment, Interstate Commerce Commission primary and 1920 rate case values, and rates of return: Class I steam railways, including switching and terminal companies, by rate groups, 1921-1931*

#### I. TOTAL FOR ALL GROUPS

Year	Net railway operating income for calendar year	Investment in road and equipment at end of year <sup>1</sup>	Interstate Commerce Commission primary values brought down to end of year indicated <sup>2</sup>	Value taken by Interstate Commerce Commission in increased rates, 1920 <sup>3</sup>	Rate of return on—		
					Investment	Inter-Commerce Commission primary value	1920 rate case value
		Millions	Millions	Millions	Per cent	Per cent	Per cent
1921	\$615,945,614	\$19,965	\$17,905	\$19,388	3.09	3.44	3.18
1922	776,880,593	20,096	18,036	19,519	3.87	4.31	3.98
1923	983,736,225	21,041	18,981	20,464	4.68	5.18	4.81
1924	986,717,759	21,745	19,685	21,168	4.54	5.01	4.66
1925	1,133,632,320	22,222	20,162	21,645	5.12	5.96	5.26
1926	1,233,003,087	22,753	20,693	22,176	5.42	5.96	5.56
1927	1,085,141,596	23,170	21,110	22,593	4.68	5.14	4.81
1928	1,194,487,806	23,503	21,443	22,926	5.08	5.57	5.21
1929	1,274,595,403	24,025	21,965	23,448	5.31	5.80	5.44
1930	885,011,325	24,311	22,251	23,734	3.64	3.98	3.73
1931 <sup>4</sup>	547,800,000				2.25	2.46	2.30

#### II. EASTERN GROUP (EASTERN DISTRICT AND POCAHONTAS REGION)

1921	\$273,648,890	\$8,846	\$8,460	\$8,846	3.09	3.23	3.09
1922	342,447,567	8,912	8,526	8,912	3.84	4.02	3.84
1923	479,415,315	9,329	8,943	9,329	5.14	5.36	5.14
1924	496,181,385	9,721	9,335	9,720	4.80	4.99	4.80
1925	555,924,990	9,901	9,515	9,901	5.61	5.84	5.61
1926	615,673,858	10,127	9,741	10,127	6.08	6.32	6.08
1927	540,045,026	10,339	9,953	10,339	5.22	5.43	5.22
1928	596,518,256	10,455	10,069	10,455	5.71	5.91	5.71
1929	648,738,188	10,733	10,346	10,732	6.04	6.27	6.04
1930	447,547,812	10,952	10,566	10,952	4.09	4.24	4.09
1931 <sup>4</sup>	281,200,000				2.57	2.66	2.57

<sup>1</sup> Income estimated for year from 11 months returns. Rates computed on 1930 values.

<sup>2</sup> Accounts 701 and 702, material, supplies, and cash. Accrued depreciation deducted. Proprietary companies included after 1922.

<sup>3</sup> Based on Interstate Commerce Commission primary values adjusted to date by adding net increase in book value, less increase in accrued depreciation each year, plus an allowance for working capital. Figure as of Dec. 31, 1930, determined from study of values and subsequent investment for individual roads. Total for prior years in this table obtained by subtracting annual change in investment computed from preceding column. Adjustments for parts of systems in Canada not made in this table.

<sup>4</sup> Value of 1819 billions in 55 Interstate Commerce Commission 220, 229, adjusted for Class I railways and brought down to date as in preceding columns.



Net railway operating income, investment, Interstate Commerce Commission primary and 1920 rate case values, and rates of return: Class I steam railways, including switching and terminal companies, by rate groups, 1921-1931—Continued

## III. SOUTHERN GROUP (SOUTHERN REGION)

Year	Net railway operating income for calendar year	Investment in road and equipment at end of year	Interstate Commerce Commission primary values brought down to end of year indicated	Value taken by Interstate Commerce Commission in increased rates, 1920	Rate of return on—		
					Investment	Inter-Commerce Commission primary value	1920 rate case value
1921	\$57,511,149	Millions	Millions	Millions	Per cent	Per cent	Per cent
1922	109,992,301	\$2,310	\$2,164	\$2,264	2.49	2.66	2.54
1923	129,764,446	2,348	2,203	2,302	4.68	4.99	4.78
1924	142,553,806	2,537	2,392	2,491	5.11	5.42	5.21
1925	168,183,725	2,632	2,487	2,587	5.42	5.73	5.51
1926	163,204,516	2,746	2,600	2,700	6.12	6.47	6.23
1927	136,462,857	2,888	2,743	2,842	5.65	5.95	5.74
1928	133,769,316	2,936	2,791	2,891	4.64	4.90	4.73
1929	133,115,671	3,002	2,856	2,956	4.46	4.68	4.53
1930	89,107,055	3,015	2,870	2,970	4.42	4.64	4.49
1931	44,800,000	3,006	2,861	2,960	2.96	3.11	3.01
					1.49	1.57	1.51

## IV. WESTERN AND MOUNTAIN-PACIFIC GROUPS (WESTERN DISTRICT)

1921	\$284,785,675	\$8,809	\$7,281	\$8,278	3.23	3.91	3.44
1922	324,440,725	8,836	7,308	8,305	3.67	4.44	3.91
1923	374,556,464	9,175	7,646	8,644	4.08	4.90	4.33
1924	377,982,568	9,392	7,863	8,861	4.02	4.81	4.27
1925	414,523,605	9,575	8,047	9,044	4.33	5.15	4.58
1926	454,124,713	9,738	8,209	9,207	4.66	5.53	4.93
1927	468,433,713	9,895	8,366	9,363	4.13	4.88	4.36
1928	464,200,234	10,046	8,518	9,515	4.62	5.45	4.88
1929	492,741,544	10,277	8,749	9,746	4.79	5.63	5.06
1930	348,356,458	10,353	8,825	9,822	3.36	3.95	3.55
1931	221,800,000				2.14	2.51	2.26

<sup>1</sup> Income estimated for year from 11 months returns. Rates computed on 1930 values.

Total estimated recapture liability of railroads by classes for the period 1920 to 1930, inclusive

Class	Estimated liability	Per cent
I.....	\$336,443,378	93.08
II.....	15,929,742	4.41
III.....	2,259,036	.62
IV.....	6,833,659	1.89
Total.....	361,465,815	100.00

## METHOD OF ESTIMATING RECAPTURE LIABILITY

When information in the files of the commission permits recapture liability has been based upon a value determined by according equal weight to original cost of structures, estimated if not known, and their cost of reproduction, with depreciation deducted and value of land and working capital added. If this information is not available the value is found by adding to the single sum value, less working capital, shown in the final or tentative valuation reports under section 19a, the net cost of additions and betterments with adjustments for property changes from year to year, plus working capital not in excess of the cash and materials and supplies as reported by the carrier. In the absence of any basic valuation data the book investment less depreciation is taken as the estimate of value. Generally the carriers' reported net railway operating income has been used in these computations.

Statement of estimated recapture liability of railroads for the period 1920-1930, grouped by classes, with total corporate surplus as of December 31, 1920, 1929, and 1930, and net income for these years

Class I carriers	Estimated recapture liability <sup>1</sup>	Net income		Total corporate surplus	
		1920	1929	Dec. 31, 1920	Dec. 31, 1929
Cheapeake & Ohio	\$47,779,611	\$6,025,692	\$32,192,416	\$39,284,792	\$142,232,518
Norfolk & Western	42,106,483	12,496,788	41,868,511	75,737,773	186,920,103
Duluth, Missabe & Northern	25,462,336	3,162,865	10,345,494	33,021,405	67,143,142
St. Louis-San Francisco	15,838,881	1,603,921	18,459,833	6,923,785	28,960,560
Southern Railway	13,740,555	11,165,622	15,588,741	48,649,902	118,755,400
Reading Co.	11,370,624	2,982,758	4,417,763	63,709,692	114,102,767
Hessamine & Lake Erie	11,015,315	37,608,794	58,772,690	20,455,045	40,756,611
Atlantic Coast Line	9,722,431	7,960,713	11,921,561	172,522,391	307,681,818
Edgen, Joliet & Eastern	9,374,265	2,243,831	7,390,643	4,814,055	101,660,455
New York, Chicago & St. Louis	8,393,947	36,696,938	44,257,401	11,018,696	13,144,794
Union Pacific	7,556,520	2,727,240	7,921,347	140,100,556	47,728,586
Missouri-Kansas-Texas	7,394,770	3,287,462	5,752,754	16,627,003	246,662,186
Virginian Valley	5,241,114	353,315	5,189,901	14,217,171	29,410,091
Rocky Mountain	4,933,075	1,365,015	7,473,719	16,627,003	14,401,537
Terminal Association of St. Louis	4,893,064	13,267,658	7,473,719	27,653,136	56,114,197
St. Louis-San Francisco	4,183,231	2,651,915	7,390,643	7,835,267	29,901,920
Texas & Pacific	3,969,082	1,153,231	7,390,643	7,835,267	29,901,920
Union (Pennsylvania)	3,814,226	91,246	7,390,643	90,922,837	298,253,205
Detroit, Toledo & Ironton	3,712,402	1,576,623	35,891,742	24,724,232	49,196,181
Chicago River & Indiana	3,690,573	185,511	7,390,643	8,896,524	5,767,223
Wheeling & Lake Erie	3,319,671	7,454,431	1,494,650	7,680,367	15,302,929
Baltimore & Ohio	2,871,671	7,454,431	1,494,650	3,201,130	21,436,702
Richmond, Fredericksburg & Potomac	2,476,627	5,284,940	2,259,973	33,806,609	114,468,786
Delaware & Hudson	2,387,155	2,052,283	7,854,404	6,231,732	10,489,155
Washington, Co. of Chicago	2,383,800	2,052,283	7,854,404	30,833,367	56,439,074
Delaware & Maryland	2,270,903	243,555	681,418	12,174,588	47,747,790
Gulf Coast Lines	2,044,974	4,037,096	22,296,268	13,527,155	3,786,337
St. Louis-San Francisco	1,955,924	4,037,096	22,296,268	3,786,337	4,469,595
New York, New Haven & Hartford	1,771,576	4,037,096	22,296,268	3,786,337	4,469,595
Monongahela Ry.	1,771,576	4,037,096	22,296,268	3,786,337	4,469,595
Kansas City, Mexico & Orient	1,771,576	4,037,096	22,296,268	3,786,337	4,469,595
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<sup>1</sup> Includes all system lines.

## RAILROAD LEGISLATION

Statement of estimated recapitulation liability of railroads for the period 1920-1930, grouped by classes, with total corporate surplus as of December 31, 1920, 1929, and 1930, and net income for these years—Continued

CLASS I CARRIERS—Continued (Annual operating revenues above \$1,000,000)	Estimated recapitulation liability	Net income		Total corporate surplus	
		1920	1929	Dec. 31, 1920	Dec. 31, 1929
Toledo terminal.....	\$1,728,456	\$202,127	\$361,066	—\$201,798	\$2,353,174
Duluth & Iron Range.....	1,670,203	2,003,958	2,212,011	20,832,009	25,433,046
Illinois terminal.....	1,549,265	335,072	500,393	1,583,177	4,871,745
Albion & New England.....	1,549,265	335,072	500,393	1,583,177	4,871,745
Denver & Rio Grande Western.....	1,381,263	825,650	802,350	1,703,981	2,857,065
Florida East Coast.....	1,263,075	1,915,632	3,555,653	15,301,247	5,142,119
Western Maryland.....	1,203,479	1,387,709	1,998,312	14,408,130	16,786,307
Delaware, Lackawanna & Western.....	1,201,965	57,735	2,917,522	1,892,000	14,126,370
Chicago & Illinois Midland.....	1,185,785	14,099,700	13,340,130	107,834,912	19,399,771
Colo, St. Louis & Western.....	1,165,097	35,790	34,865	—359,865	7,000,402
Seaboard Air Line.....	1,096,453	650,367	1,368,433	2,892,023	—1,016,410
Montour Railroad.....	1,094,540	27,603	1,011,678	1,856,251	4,740,675
Nevada Northern.....	913,743	266,360	841,269	6,382,000	3,966,543
Brooklyn eastern district terminal.....	894,524	607,854	704,534	1,224,343	3,227,267
Lake Superior & Ishpeming.....	884,524	—85,042	67,676	1,500,750	1,780,511
Penn. & Erie.....	794,731	358,453	25,935,551	122,749,921	1,735,582
Cincinnati Union.....	704,448	19,730	18,006,748	2,908,922	1,715,394
Cleveland.....	704,448	19,730	18,006,748	2,908,922	1,715,394
Pittsburgh & West Virginia.....	685,850	433,679	334,191	1,950,405	104,005,196
Akron, Canton & Youngstown.....	639,100	1,136,226	1,308,410	4,853,634	4,776,839
Gulf, Mobile & Northern.....	527,931	94,682	282,404	4,400,864	7,764,254
Albion & Hudson River.....	517,715	15,827	291,000	1,843,037	9,404,260
Lehigh & Hudson River.....	517,715	15,827	291,000	1,843,037	9,404,260
Southern Pacific.....	487,002	334,818	334,191	2,107,314	2,877,440
Western Ry. of Alabama.....	452,060	23,364,235	34,374,931	138,526,334	2,877,440
Louisville, Henderson & St. Louis.....	414,394	233,313	422,810	4,470,981	4,197,821
Buffalo, Rochester & Pittsburgh.....	402,839	3,325,700	1,008,098	3,905,776	290,553,926
Detrol Terminal.....	393,408	96,711	728,976	291,260	3,896,668
Altoona & Southern.....	338,408	230,707	—87,087	1,288,135	4,125,120
Utah.....	222,616	509,845	391,945	798,365	4,096,146
Texas Mexican.....	186,139	222,226	90,855	—61,380	1,254,288
Monongahela Connecting.....	167,543	—44,029	—54,231	1,352,008	1,131,981
		312,452	429,491	—2,651,220	2,390,317
				1,776,217	2,472,804
				—3,083,641	3,262,591

## RAILROAD LEGISLATION

CLASS II CARRIERS (Annual operating revenues from \$100,000 to \$1,000,000)	Estimated recapitulation liability	Net income		Total corporate surplus	
		1920	1929	Dec. 31, 1920	Dec. 31, 1929
Chicago & Alton.....	160,165	—684,647	2,631,194	—4,487,250	24,613,211
Louisville & Nashville.....	139,462	12,784,542	12,784,542	82,985,490	95,061,860
International Great Northern.....	127,361	1,332,574	1,113,527	2,305,429	—721,621
Alabama & Black Lick.....	127,361	1,332,574	1,113,527	3,079,366	1,960,196
Pittsburgh & Shawmut.....	122,056	384,446	101,625	2,577,914	—10,192
Buffalo & Susquehanna.....	66,891	791,435	268,837	1,836,235	2,850,260
Newburgh & South Shore.....	61,132	263,391	300,000	1,836,235	2,850,260
El Paso & Southwestern.....	58,680	2,287,033	179,515	16,458,873	2,277,827
Lake Terminal.....	57,862	530,720	69,813	—386,272	6,187,310
Chicago, Erie Haute & Southeastern.....	53,252	140,500	628,812	1,711,365	311,106
Missouri Pacific.....	46,708	—7,721	423,316	1,270,929	1,270,512
Bay Terminal.....	37,332	12,855	26,812	6,120,233	4,787,701
Georgia R. R.....	31,970	—1,438	30,538	488,360	487,126
Kansas, Oklahoma & Gulf.....	27,333	4,490	1,188,177	3,330,151	3,367,771
Charleston & Western Carolina.....	6,510	231,613	335,212	2,655,464	2,339,463
Green Bay & Western.....				1,894,856	4,464,778
Total Class I.....	336,443,378				
Gambria & Indiana.....	1,860,914	410,407	1,038,310	483,085	3,313,985
Geussess & Wyoming.....	887,894	96,174	64,688	341,809	691,196
Litchfield & Madison.....	847,232	171,311	436,902	62,618	703,547
Louisiana & Northwest.....	811,960	—236,700	137,721	—2,009,580	1,290,463
Interstate.....	429,417	32,923	581,656	84,894	345,040
Oklahoma, New Mexico & Pacific.....	370,802	47,500	—54,465	387,722	
St. Louis & O'Fallon.....	330,884	242,949	60,419	60,419	970,847
Port Huron & Detroit.....	299,457	32,771	53,670	39,224	389,839
Tampa & Gulf Coast.....	299,476	—71,990	6,071	—98,215	—97,000
Durham & Southern.....	285,859	44,16	112,484	94,530	107,000
Okanilgee Northern.....	280,210	123,435	72,881	31,015	149,000
Omwall Southern.....	269,483	—20,618	64,170	219,840	100,988
Alton & Eastern.....	236,901	—3,306	20,618	(?)	(?)
Sierra Railway of California.....	221,673	3,306	492,914	303,882	3,300,977
Brimstone Railroad & Canal.....	217,793	39,588	—81,177	1,311,903	1,311,903
Roscoe Snyder & Pacific.....	209,096	38,585	—15,706	—572,710	193,675
Montana, Wyoming & Southern.....	201,269	114,870	63,083	646,245	811,014
Sugar Land.....	186,211	47,777	280,179	388,800	312,900
Tremont & Gulf.....	178,877	—94,400	372,471	—142,313	—136,060
Yosemite Valley.....	175,067	—23,433	—11,246	—817,366	—982,688
St. Louis, Troy & Eastern.....	173,176	292,236	—202,297	4,201,685	4,062,279
Tucson, Cornelia & Gila Bend.....	168,043	71,656	110,369	110,369	224,623
San Antonio Southern.....	168,043	58,934	—15,401	137,693	159,492

\* Not reported.

## RAILROAD LEGISLATION

Statement of estimated recapture liability of railroads for the period 1920-1930, grouped by classes, with total corporate surplus as of December 31, 1920, 1929, and 1930, and net income for these years—Continued

	Estimated recapture liability	Net income		Total corporate surplus	
		1920	1929	Dec. 31, 1920	Dec. 31, 1929
CLASS II CARRIERS—Continued (Annual operating revenues from \$100,000 to \$1,000,000)					
Paducah & Illinois	\$157,841	\$53,456	\$1,303	\$33,774	\$506,707
Sandy Valley & Elkhorn	133,545	(1)	(1)	43,691	(1)
Louisiana & Pacific	132,649	187,016	29,990	223,644	2,211,948
Pittsburgh, Chartiers & Youghiogheny	128,847	11,850	(1)	1,748,442	(1)
Great Western, Tennessee & Northern	125,760	104,581	150,224	1,039,319	1,111,832
Pearl River Valley	124,065	34,354	44,772	1,036,312	1,579,730
Red River & Gulf	122,111	22,744	10,154	321,255	1,908
McCloud River	120,238	10,238	(1)	137,567	282,541
Morgantown & Wheeling	116,083	106,238	18,630	661,170	1,179,140
Minnesota, Dakota & Western	108,363	260,419	(1)	206,733	(1)
Live Oak, Pecos & Gulf	108,182	5,414	68,232	415,983	228,138
Minneapolis, Northfield & Southern	100,263	734	46,483	200,166	377,902
Ashley, Drew & Northern	93,783	22,912	95,914	12,878	728,400
Birmingham & Southeastern	93,371	141,557	59,341	810,605	1,111,832
Lake Erie, Franklin & Clarion	89,701	22,546	73,147	11,927	333,153
Jackson & Eastern	82,253	21,635	(1)	337,263	448,572
Nogales & Bath	78,660	73,109	10,094	143,563	249,682
Gulf & Sabine River	74,130	108,642	30,851	87,594	397,356
West Virginia	73,406	22,119	(1)	120,924	(1)
Midland Terminal	71,229	47,388	61,246	54,088	386,221
Miami Mineral Belt	64,496	5,651	103,203	332,905	346,962
Richita Falls & Southern	64,384	27,743	46,710	345,704	(1)
Chattanooga, Lake City & Laurens	60,859	57,722	138,311	272,917	585,194
Jonesboro, Lake City & Southern	57,722	71,369	(1)	313,064	500,357
Wildwood & Delaware Bay Short Line	57,580	8,438	41,375	1,094,245	395,008
Ray & Gila Valley	54,175	53,951	48,836	32,782	664,333
East Broad Top R. R. & Coal Co.	51,469	121,335	79,592	618,749	953,325
Tennessee Valley	51,469	33,250	87,457	175,139	(1)
Georgia Northern	50,188	18,552	40,120	7,155	172,247
Georgia Florida & Alabama	49,718	70,887	50,013	585,096	302,440
Sewall Valley	46,223	13,339	(1)	11,085	403,530
Arkansas, Louisiana & Missouri	44,801	17,013	70,685	121,248	95,711
California Central	44,176	26,470	14,714	42,945	177,600
				80,279	203,598
				156,191	1,384,965
				170,541	346,679
				17,001	341,735
				165,492	302,045
				297,474	302,045

## RAILROAD LEGISLATION

	Estimated recapture liability	Net income		Total corporate surplus	
		1920	1929	Dec. 31, 1920	Dec. 31, 1929
Oklahoma City, Ada, Atoka	42,653	(1)	(1)	39,963	(1)
Birmingham & Northwestern	40,619	9,221	44,962	29,481	319,389
Trona	40,235	60,114	148,726	545,187	600,169
Raritan River	38,464	810	(1)	45,959	(1)
Atlanta & Virginia	37,660	225,562	203,511	323,773	940,694
Chattanooga Valley	32,094	49,017	56,105	120,920	317,156
Onetida & Western	32,811	37,098	39,006	66,670	397,462
Louisiana Southern	31,098	10,553	109,747	13,598	1,703,966
Midtown & Unionville	29,848	43,594	7,921	78,494	128,793
St. Louis & River	28,710	88,323	111,351	(1)	49,097
St. Louis & West	28,068	52,135	9,929	265,985	373,812
Mississippi River & Boone Terre	27,316	205,321	6,307	372,482	435,684
Nevada Copper Belt	27,316	12,855	115,845	128,867	298,832
Cisco & Northeastern	26,896	18,542	38,879	155,048	230,362
Morristown & Erie	26,330	20,291	22,051	222,168	(1)
Franklin & Abbeville	23,893	4,457	20,355	4,408	225,100
Tennessee & North Carolina	22,742	5,533	42,277	79,897	32,475
Grayson Creek	22,357	1,914	14,359	24,677	15,786
Toledo Valley	21,726	100,945	3,498	30,800	96,895
Grayson Nashville & Ashdown	21,726	100,945	3,498	30,800	96,895
Ferwood Columbia & Gulf	19,917	79,586	(1)	291,818	(1)
Butler County	19,766	18,203	3,885	90,708	32,363
Cumberland & Manchester	18,969	35,280	15,810	119,148	28,922
Gatesville-Snyder Superior	18,911	56,464	136,447	587,928	798,800
Georgia Southern & Western	18,873	34,290	37,791	46,161	56,628
Marion & Western	17,241	(1)	2,032	157	184,474
Marquette, Tomahawk & Western	16,832	5,471	8,396	10,474	38,241
East Jordan & Southern	16,323	8,182	26,697	8,682	187
Big Sandy & Kentucky River	16,126	10,785	26,925	15,762	129,971
Jackson & Kentucky River	15,813	72,002	363,101	7,899	13,717
Big Sandy & Cumberland	15,813	72,002	363,101	7,899	13,717
Big Sandy & Denton	14,634	2,339	143,443	34,960	289,164
Blytheville, Leachville & Arkansas Southern	14,634	2,339	143,443	34,960	289,164
Canton & Carthage	14,613	59,864	141,404	29,419	31,278
San Joaquin & Eastern	12,599	76,912	3,643	219,923	910,223
Cumberland & Pennsylvania	12,559	6,004	18,583	108,470	1,219,921
Chestnut River	11,275	16,715	14,201	126,755	108,690
Norfolk & St. Lawrence	11,213	104,293	33,083	201,597	276,268
Utah	10,289	3,620	36,811	48,157	6,433,690
Colorado & Wyoming	10,289	3,620	36,811	48,157	6,433,690
Potato Creek	10,143	80,623	26,824	11,934	948,320
Cowitz, Chehalis & Cascade	9,302	89,603	54,190	69,717	17,087
East Tennessee & Western North Carolina	9,047	69,784	16,515	66,496	482,766
Macon, Dublin & Cavannah	8,323	12,760	12,760	72,352	27,091
Longview, Portland & Northern	8,066	18,965	13,191	263,922	183,072
Prescott & Northwestern	7,421	28,242	177,344	207,314	479,948
Winston-Salem Southbound	7,421	28,242	177,344	207,314	706,583

\* Not reported.



Statement of estimated recapture liability of railroads for the period 1920-1930, grouped by classes, with total corporate surplus as of December 31, 1920, 1929, and 1930, and net income for these years—Continued

	Estimated recapture liability	Net income			Total corporate surplus	
		1920	1929	1930	Dec. 31, 1929	Dec. 31, 1930
CLASS II CARRIERS—Continued (Annual operating revenues from \$100,000 to \$1,000,000)						
Arizona & New Mexico.....	\$6,498	\$213,245	(1)	(1)	\$1,102,452	(1)
Meridian & Memphis.....	6,387	-175,083	(1)	(1)	-281,654	(1)
Aberdeen & Rockfish.....	6,387	-4,005	\$9,573	\$16,916	-4,659	\$41,743
Sumpter Valley.....	5,844	43,898	14,277	645	-336,307	339,713
Kanawha, Glen Jean & Eastern.....	5,844	43,898	14,277	645	-336,307	339,713
Indian Valley.....	4,970	46,031	33,973	92,040	52,875	454,333
Truman & Western.....	4,944	-61,496	26,354	9,005	110,933	221,829
Coudersport & Port Allegany.....	4,822	10,826	3,576	-19,392	18,713	28,998
Detroit, Caro & Sandusky.....	4,728	-26,580	(1)	14,923	(1)	20,350
Tampa & Jacksonville.....	4,597	-14,953	(1)	42,644	(1)	44,660
Upper Merion & Plymouth.....	3,359	51,785	171,767	70,720	305,172	394,852
Northwestern R. R. of South Carolina.....	3,359	51,785	171,767	70,720	305,172	394,852
Lake Champlain & Moriah.....	3,359	51,785	171,767	70,720	305,172	394,852
Minnesota & Aerial.....	3,194	28,492	6,432	-21,064	-115,983	-38,158
Virginia & Carolina Southern.....	3,194	28,492	6,432	-21,064	-115,983	-38,158
Maryland & Delaware Coast.....	3,068	4,703	19,819	14,333	100,635	290,253
Colorado & Southeastern.....	2,924	4,703	17,166	7,792	(1)	338
Helena Southwestern.....	2,924	4,703	17,166	7,792	(1)	338
Kentucky & Tennessee.....	2,583	47,387	-8,443	-6,938	-33,128	(1)
Missouri Southern.....	2,583	47,387	-8,443	-6,938	-33,128	(1)
Texas & New Orleans.....	2,555	60,051	63,077	44,253	820	43,419
Turkington & Northeastern.....	1,940	60,051	63,077	44,253	820	43,419
Carolina & North.....	1,550	63,633	13,566	12,610	577,013	589,870
Minneapolis, Red Lake & Manitoba.....	1,407	9,725	13,566	12,610	577,013	589,870
South Georgia.....	354	10,501	38,078	12,370	210,350	-41,801
Total Class II.....	15,929,742					
CLASS III CARRIERS (Annual operating revenues below \$100,000)						
El Dorado & Wesson.....	290,982	-1,411	38,041	68,156	56,880	394,324
Unity Railways.....	208,282	17,493	57,535	64,732	41,578	376,327
Gallegos & Western.....	182,115	-20,633	57,535	37,878	148,342	142,968
Toledo, Angola & Western.....	137,386	-28,774	56,080	37,878	318,575	391,424
Kosciusko & Southeastern.....	121,884	2,681	-8,843	-10,063	2,960	1,001
Appalachian.....	105,467	16,888	-8,746	-16,426	-42,921	18,904

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Fairport, Painesville & Eastern.....	90,573	-2,457	43,137	21,610	66,559	72,362	74,488
Kelley's Creek & Northwestern.....	84,405	17,493	50,808	-19,916	-56,407	30,851	66,232
Erie & Michigan Ry. & Navigation Co.....	79,671	5,050	4,427	-18,101	31,416	102,067	70,360
Indian Creek Valley.....	67,640	(1)	541	-8,729	(1)	6,976	(1)
Rockcastle River.....	61,001	20,342	8,012	8,012	26,081	91,133	1,753
Rockcastle River.....	58,992	-2,959	8,012	-10,644	137,343	95,000	95,000
Silvan Northern.....	57,130	(1)	(1)	(1)	(1)	93,001	93,001
Carlton & Coast.....	46,071	5,227	10,743	7,718	-349,630	105,731	95,087
Warrenton.....	39,883	-6,080	32,285	12,455	(1)	61,572	62,600
Tuskegee.....	36,223	17,353	-1,119	-25,979	8,302	129,892	119,508
Count Polana & Tidewater.....	31,445	17,353	-1,119	-25,979	8,302	129,892	119,508
San Luis Central.....	25,535	2,240	4,683	1,364	69,028	33,817	22,776
Port Townsend & Puget Sound.....	25,535	2,240	4,683	1,364	69,028	33,817	22,776
Laurinburg & Southern.....	23,624	4,853	4,757	16,286	21,200	47,942	75,359
Mansfield Ry. & Transportation.....	23,337	4,230	2,820	-32,750	-61,142	-213,862	-247,527
Modesta & Empire Tractor.....	22,287	-1,190	2,820	-12,291	(1)	14,176	3,451
Quincy Southern.....	21,995	(1)	28,565	16,013	(1)	76,347	70,246
Kelley's Creek.....	21,709	(1)	28,565	16,013	(1)	76,347	70,246
Marianna & Blountstown.....	18,575	1,551	2,916	-6,094	-102,539	-72,374	-74,697
Nearme, Carson & Southern.....	17,426	14,205	12,593	10,584	-22,944	107,698	110,228
Bennettsville & Cheraw.....	17,383	-3,909	794	819	2,665	16,847	17,477
Birmingham, Minna & Mobile.....	17,121	17,345	14,483	5,303	10,897	20,362	12,523
Rockcastle River.....	16,634	-20,140	(1)	(1)	(1)	(1)	(1)
Ronoke Railway.....	16,542	16,542	9,937	6,219	22,874	7,659	1,693
Warren & Ouchita Valley.....	15,758	-1,553	3,673	-2,688	-25,103	41,733	4,743
Alabama & Northwestern.....	15,408	-20,327	-2,028	-2,440	32,689	8,899	6,211
Sandersville.....	14,941	13,818	-26,153	(1)	65,655	33,535	32,256
Kansas & Sidel.....	14,841	26,998	6,047	36,115	44,451	106,765	46,190
Big & Western.....	14,414	18,720	26,754	11,173	52,375	-47,189	-12,491
Sanita Maria Valley.....	14,126	(1)	210	(1)	(1)	(1)	(1)
Hopple, Yorktown & Tampico.....	14,096	210	210	210	(1)	72,608	68,053
Glenmore & Western.....	13,189	(1)	23,795	4,575	(1)	7,842	8,453
Ware Shoals.....	11,244	16,908	-270	-15,765	94,738	6,842	57,179
Kanawha Central.....	10,817	(1)	3,412	(1)	79,908	-75,641	-76,131
Bay Point & Clayton.....	10,734	6,387	12,018	-1,061	-31,477	12,005	11,121
Marion & Eastern.....	10,630	-17,210	-14,470	25,464	49,355	-105,226	-79,761
Pickens.....	9,788	14,341	5,104	(1)	129,997	106,765	(1)
Annard Central.....	9,079	1,134	4,408	-4,273	1,154	12,890	8,587
Reynoldsville & Falls Creek.....	8,442	-24,028	(1)	(1)	-15,400	124,457	-138,822
Atlantic & Carolina.....	7,302	-31,757	18,000	6,627	-28,414	-14,672	-23,605
Danville & Mount Morris.....	7,265	2,645	887	-1,821	-41,157	-10,611	(1)
Washington & Lincolnton.....	7,230	1,938	-33,665	-58,802	-142,127	-55,002	-116,277
Salem, Winona & Southern.....	6,939	1,938	-33,665	-58,802	-142,127	-55,002	-116,277
Pecos Valley Southern.....	6,856	-18,158	-3,703	-11,410	-33,560	-109,046	-178,545
Christie & Eastern.....							

\* Not reported.

Statement of estimated recapture liability of railroads for the period 1920-1930, grouped by classes, with total corporate surplus as of December 31, 1920, 1929, and 1930, and net income for these years—Continued

	Estimated recapture liability	Net income		Total corporate surplus	
		1920	1929	Dec. 31, 1920	Dec. 31, 1929
CLASS III. CARRIERS--Continued (Annual operating revenues below \$100,000)					
Moscow, Camden & San Augustine	\$6,766	-\$1,995	-\$337	-\$11,539	-\$7,513
Natchez, Ureana & Ruston	5,221	4,000	1,884	32,123	10,459
Shreveport, Houston & Gulf	5,160	3,365	1,884	28,533	22,403
Nacogdoches & Southeastern	5,049	4,482	2,025	9,509	9,376
Doniphan, Kensett & Seary	5,003	962	3,262	31,358	28,053
Puget Sound & Cascade	5,003	962	3,262	31,358	28,053
Bath & Hammond	4,874	5,283	82,605	17,417	139,388
Collins & Glenville	4,859	31,088	16,915	10,792	294,872
Superior & Southeastern	4,721	2,600	97,183	45,410	246,351
Beaver, Meade & Englewood	4,563	12,084	8,044	142,842	94,614
Atlantic & Western	4,317	15,632	6,220	85,270	32,646
Denison, Bonham & New Orleans	4,318	6,500	709	18,400	1,711
Mississippi & Alabama	4,185	2,330	3,309	2,399	49,301
Motley County	4,177	2,822	8,011	12,539	6,659
Central Railway of Arkansas	4,173	8,396	9,025	2,797	5,638
Tennessee, Kentucky & Northern	4,166	5,300	2,797	2,366	102,315
Cape Fear Railways (Inc.)	4,065	187	(1)	(1)	131,888
Washington Run	3,996	19,090	20,573	51,496	58,924
Shelby County	3,986	18,884	3,271	94,290	156,467
Lowville & Beaver River	3,827	11,533	3,271	128,467	13,113
Fordyce & Princeton	3,806	8,639	1,886	8,557	13,361
Louisville, New Albany & Corydon	3,722	-7,948	-14,406	18,140	490
Glady & Alpena	3,223	46,471	-75,832	-19,036	(1)
Louisiana & Pine Bluff	3,199	12,107	191	29,433	12,920
Buffalo Union Railroad	3,183	12,107	191	29,433	3,934
Buffalo Union Railroad	3,027	1,167	487	18,424	77,730
Lufkin, Hemphill & Gulf	3,007	1,167	1,167	15,845	28,586
Leesville, Slagel & Eastern	2,836	26,308	-394,107	13,441	(1)
Alcorn	2,836	14,545	1	1	(1)
West Pittston-Exeter	2,498	15,145	14,527	25,246	23,256
Goshen Valley	2,498	(1)	(1)	1	104,051
Oil Fields Short Line	2,498	1,539	575	135,490	27,800
Kennebec Central	2,434	2,909	1,408	67,794	47,800
Unadilla Valley	2,416	2,416	26,372	17,814	32,123
Rockport, Langdon & Northern	2,416	2,416	1,089	17,814	272,002
Oregon, Pacific & Eastern	2,307	23,087	-51,846	-63,721	-32,123
Montana	2,294	15,274	-2,925	2,925	19,101

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Carolina Western	1,983	7,096	-2,454	-17,917	-20,453
Montana Western	1,983	7,096	-2,454	-17,917	-20,453
Dover & South Bound	1,640	3,540	-2,247	-23,426	-240,714
Smoky Mountain	1,494	3,540	-2,247	-23,426	-240,714
Gulf & Northern	1,404	3,540	-2,247	-23,426	-240,714
Kansas Southern	1,404	3,540	-2,247	-23,426	-240,714
Kansas Southern	1,404	3,540	-2,247	-23,426	-240,714
Grassy River	1,343	3,540	-2,247	-23,426	-240,714
Cadiz	1,040	3,540	-2,247	-23,426	-240,714
Black Mountain	940	3,540	-2,247	-23,426	-240,714
Mississippi Export	940	3,540	-2,247	-23,426	-240,714
Monson	928	3,540	-2,247	-23,426	-240,714
Alabama Central	921	3,540	-2,247	-23,426	-240,714
Alabama Ashburn, Sylvester & Canilla	911	3,540	-2,247	-23,426	-240,714
Murfreesboro, Nashville & Southwestern	874	3,540	-2,247	-23,426	-240,714
Thornton & Alexandria	859	3,540	-2,247	-23,426	-240,714
Kinston Carolina	829	3,540	-2,247	-23,426	-240,714
Kane & Elk	829	3,540	-2,247	-23,426	-240,714
Hickory Valley	785	3,540	-2,247	-23,426	-240,714
Crane Mountain	742	3,540	-2,247	-23,426	-240,714
Orphan County	742	3,540	-2,247	-23,426	-240,714
Belleville Central	688	3,540	-2,247	-23,426	-240,714
Flint River & Northeastern	688	3,540	-2,247	-23,426	-240,714
Washington, Brandywine & Point Lookout	639	3,540	-2,247	-23,426	-240,714
Carolina Southern	639	3,540	-2,247	-23,426	-240,714
Carolina Southern	639	3,540	-2,247	-23,426	-240,714
Portland & Hattiesburg Southern	606	3,540	-2,247	-23,426	-240,714
Portland	547	3,540	-2,247	-23,426	-240,714
Marcellus & Otisco Co.	535	3,540	-2,247	-23,426	-240,714
Kinder & Northwestern	499	3,540	-2,247	-23,426	-240,714
Augusta	418	3,540	-2,247	-23,426	-240,714
Rowlesburg & Southern	384	3,540	-2,247	-23,426	-240,714
Flemingsburg & Northern	375	3,540	-2,247	-23,426	-240,714
Talbotton	372	3,540	-2,247	-23,426	-240,714
Little River	283	3,540	-2,247	-23,426	-240,714
Gideon & North Island	274	3,540	-2,247	-23,426	-240,714
Milltown Air Line	158	3,540	-2,247	-23,426	-240,714
Peoria, Hanna City & Western	60	3,540	-2,247	-23,426	-240,714
Union Point & White Plains	60	3,540	-2,247	-23,426	-240,714
Total Class III	2,269,086	7,420	724	-87,518	-2,925

\* Not reported.

\* Sold in 1925.

Statement of estimated recapture liability of railroads for the period 1920-1930, grouped by classes, with total corporate surplus as of December 31, 1920, 1929, and 1930, and net income for these years—Continued

CLASS IV CARRIERS (Switching and terminal companies, excluding those shown under class I)	Estimated recapture liability	Net Income			Total corporate surplus		
		1920	1929	1930	Dec. 31, 1920	Dec. 31, 1929	Dec. 31, 1930
(Chicago & Western Indiana.....	\$794,406	\$516,411	\$464,804	\$430,131	\$781,063	\$1,541,047	\$1,267,853
Ironston.....	662,483	156,374	(37,296)	(9)	94,851	(9)	1,425,010
St. Paul Union Depot.....	388,211	37,296	37,296	46,772	(9)	260,303	304,153
Fort Wayne & Chicago.....	394,451	4,871	6,819	5,102	34,366	377,840	433,108
Wilkes-Barre Connecting.....	297,382	(9)	5,102	4,200	747,296	9,130	697,412
Texas City Terminal.....	246,239	4,200	142,632	144,829	1,756,969	431,144	233,873
Chicago Short Line.....	239,738	16,889	148,735	131,136	1,756,969	2,083,738	1,338,317
Birmingham Southern.....	236,077	18,131	105,963	132,130	1,756,969	2,083,738	1,338,317
Chicago Heights Terminal.....	237,667	18,131	105,963	132,130	1,756,969	2,083,738	1,338,317
Chicago & Memphis.....	207,346	18,131	105,963	132,130	1,756,969	2,083,738	1,338,317
Illinois N. W. & Memphis.....	207,346	18,131	105,963	132,130	1,756,969	2,083,738	1,338,317
Chicago, West Pullman & Southern.....	198,012	75,314	124,479	187,863	1,756,969	2,083,738	1,338,317
Philadelphia, Bethlehem & New England.....	151,374	117,222	186,223	91,545	1,756,969	2,083,738	1,338,317
Rock Island-Frisco Terminal.....	117,191	(9)	(9)	(9)	1,756,969	2,083,738	1,338,317
Ashland Coal & Iron.....	116,822	72,984	(9)	(9)	1,756,969	2,083,738	1,338,317
South Buffalo.....	116,822	72,984	(9)	(9)	1,756,969	2,083,738	1,338,317
La Salle & Bureau County.....	95,704	70,311	26,300	32,609	1,756,969	2,083,738	1,338,317
Missouri & Illinois Bridge & Belt.....	94,805	66,675	30,300	32,609	1,756,969	2,083,738	1,338,317
St. Paul Bridge & Terminal.....	90,116	66,675	30,300	32,609	1,756,969	2,083,738	1,338,317
Union Stock Yards of Omaha.....	86,522	63,412	40,735	17,884	1,756,969	2,083,738	1,338,317
Steelton & Highspire.....	85,573	22,994	(9)	(9)	1,756,969	2,083,738	1,338,317
Union Terminal (Dallas).....	71,111	64,489	85,930	97,739	1,756,969	2,083,738	1,338,317
Alouqua & Southern.....	70,042	64,489	85,930	97,739	1,756,969	2,083,738	1,338,317
Kansas City Terminal.....	64,866	102,825	133,200	1,980	1,756,969	2,083,738	1,338,317
St. Louis Terminal.....	57,614	323,321	85,267	85,267	1,756,969	2,083,738	1,338,317
River Terminal (St. Joe).....	56,947	19,387	11,725	8,424	1,756,969	2,083,738	1,338,317
East St. Louis.....	53,516	17,828	49,022	32,555	1,756,969	2,083,738	1,338,317
Dayton Union.....	43,132	45,731	17,027	12,837	1,756,969	2,083,738	1,338,317
Norfolk & Portsmouth Belt Line.....	40,107	36,335	106,623	8,729	1,756,969	2,083,738	1,338,317
Hoboken Manufacturers.....	37,034	11,092	500,000	50,000	1,756,969	2,083,738	1,338,317
Houston Belt & Terminal.....	30,162	37,628	(9)	(9)	1,756,969	2,083,738	1,338,317

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Hannibal Connecting.....	20,455	26,671	3,495	5,800	74,385	111,613	106,870
Des Moines Union.....	28,505	215,011	659	997	1,875,397	28,108	28,108
Indiana Northern.....	20,905	10,200	3,626	6,917	1,875,397	28,108	28,108
Ludington & Northern.....	25,833	36,650	41,810	9,713	1,875,397	28,108	28,108
Louisiana & St. Louis.....	24,898	1,315	2,803	9,713	1,875,397	28,108	28,108
East Jersey R. R. & Terminal.....	22,680	28,647	100,736	10,260	1,875,397	28,108	28,108
Youngstown & Northern.....	21,708	107,070	357,877	46,519	1,875,397	28,108	28,108
Peoria Terminal.....	18,083	1,197	13,025	10,673	1,875,397	28,108	28,108
St. Louis & Memphis.....	17,339	(9)	1,434	1,967	1,875,397	28,108	28,108
Warrior River Terminal.....	16,325	1,434	1,434	20,246	1,875,397	28,108	28,108
Winona Bridge.....	15,016	14,068	23,228	5,448	1,875,397	28,108	28,108
Pittsburgh & Ohio Valley.....	15,016	14,068	23,228	5,448	1,875,397	28,108	28,108
New York Dock.....	14,773	38,552	11,972	3,325	1,875,397	28,108	28,108
Pullman.....	14,571	21,670	26,513	6,809	1,875,397	28,108	28,108
Donora Southern.....	13,918	21,670	40,880	34,357	1,875,397	28,108	28,108
South Missouri R. R. & Terminal.....	12,815	21,670	40,880	34,357	1,875,397	28,108	28,108
South Omaha Terminal.....	9,104	10,120	8,000	7,192	1,875,397	28,108	28,108
New Haven & Danbury.....	8,690	38,794	83,049	64,172	1,875,397	28,108	28,108
Kentucky & Indian Terminal.....	8,350	76,735	33,516	15,562	1,875,397	28,108	28,108
Manufacturers Junction.....	7,609	21,884	21,884	3,524	1,875,397	28,108	28,108
Kansas City Connecting.....	6,621	15,766	15,766	32,232	1,875,397	28,108	28,108
East Erie Commercial.....	4,864	503	1,013	5,341	1,875,397	28,108	28,108
Pittsburgh, Allegheny & McKees Rock.....	3,284	23,288	23,288	66,403	1,875,397	28,108	28,108
Texas-Pennsylvania-Missouri Pacific Terminal of N. O.....	2,576	3,072	2,333	6,757	1,875,397	28,108	28,108
Berlin Mills.....	2,331	2,331	2,333	2,333	1,875,397	28,108	28,108
Lorain & Southern.....	2,071	2,071	2,071	2,071	1,875,397	28,108	28,108
Monroe & Western.....	1,970	1,970	1,970	1,970	1,875,397	28,108	28,108
Belt Line Ry. (Montgomery, Ala.).....	1,856	1,856	1,856	1,856	1,875,397	28,108	28,108
Fore River.....	1,449	1,449	1,449	1,449	1,875,397	28,108	28,108
Kansas City, Shreveport & Gulf Terminal.....	1,373	1,373	1,373	1,373	1,875,397	28,108	28,108
Chicago & Calumet River.....	1,271	1,271	1,271	1,271	1,875,397	28,108	28,108
Burlington, Muscatine N. & W.....	1,271	1,271	1,271	1,271	1,875,397	28,108	28,108
Howard Terminal.....	1,088	1,088	1,088	1,088	1,875,397	28,108	28,108
Massena Terminal.....	1,449	1,449	1,449	1,449	1,875,397	28,108	28,108
Lane Rock.....	1,373	1,373	1,373	1,373	1,875,397	28,108	28,108
Salt Lake City Union Depot.....	1,271	1,271	1,271	1,271	1,875,397	28,108	28,108
Oklahoma City Junction.....	1,271	1,271	1,271	1,271	1,875,397	28,108	28,108
Springfield Terminal.....	322	322	322	322	1,875,397	28,108	28,108
Petersburg.....	200	200	200	200	1,875,397	28,108	28,108
Fort Erie & Fort Wayne.....	91	91	91	91	1,875,397	28,108	28,108
Fort Wayne Union Ry.....	60	60	60	60	1,875,397	28,108	28,108
Total, Class IV.....	6,833,659	6,833,659	6,833,659	6,833,659	6,833,659	6,833,659	6,833,659

\* Not reported.

† Lensed Jan. 1, 1925.



List of railroads controlled by the United States Steel Corporation or its subsidiaries, subject to recapture, showing the amounts paid into the contingent fund during the period from 1920 to 1930, inclusive, dividends paid on common stock, dividend rates and net income in each of those years, and total corporate surplus as of December 31, each year

Carrier	Year	Amount paid to contingent fund	Dividends		Net income	Total corporate surplus as of Dec. 31
			Rate (per cent)	Amount		
Bessemer & Lake Erie	1920		200	\$1,000,000	\$2,982,758	\$20,455,045
Do.	1921		150	750,000	850,577	20,725,236
Do.	1922		200	1,000,000	3,496,115	23,234,898
Do.	1923		200	1,000,000	5,699,304	27,926,318
Do.	1924		250	1,250,000	2,244,714	28,913,092
Do.	1925		400	2,000,000	4,265,232	31,161,231
Do.	1926		400	2,000,000	5,322,397	34,486,643
Do.	1927		450	2,250,000	2,749,035	34,741,592
Do.	1928		500	2,500,000	4,576,727	36,663,571
Do.	1929		500	2,500,000	6,653,645	40,750,617
Do.	1930		400	2,000,000	4,417,763	43,119,055
Total		\$442,280		18,250,000	43,267,267	
Birmingham Southern R. R.	1920				-16,889	1,756,869
Do.	1921				-16,467	1,739,780
Do.	1922				185,689	1,926,209
Do.	1923				-7,804	1,918,400
Do.	1924				148,843	2,067,371
Do.	1925				137,637	2,205,118
Do.	1926				111,769	2,313,886
Do.	1927				-87,470	2,225,557
Do.	1928				-123,908	2,101,517
Do.	1929				-48,735	2,053,738
Do.	1930				-144,829	1,971,587
Total		31,371			137,836	
Carbon County Ry. (put in operation July 5, 1923)	1920					
Do.	1921					
Do.	1922					
Do.	1923				-8,211	-8,211
Do.	1924				6,164	-2,047
Do.	1925				-2,798	-4,843
Do.	1926				-833	-5,419
Do.	1927				-7,478	-12,897
Do.	1928				2,616	-10,281
Do.	1929				565	9,716
Do.	1930				16,163	3,451
Total					6,188	
Donora Southern	1920				-31,670	-294,916
Do.	1921				-60,906	-356,263
Do.	1922				89,552	-255,198
Do.	1923				82,820	-153,851
Do.	1924				-2,767	-156,580
Do.	1925				79,498	-77,150
Do.	1926				14,493	-67,171
Do.	1927				58,066	-11,123
Do.	1928				41,892	22,287
Do.	1929				26,518	45,331
Do.	1930				6,809	50,295
Total					304,315	
Duluth & Iron Range R. R.	1920		15	975,000	2,903,958	20,832,069
Do.	1921		15	975,000	206,415	20,796,426
Do.	1922		20	1,300,000	1,616,412	21,182,477
Do.	1923		25	1,625,000	2,272,740	21,953,502
Do.	1924		15	975,000	1,429,857	22,454,038
Do.	1925		15	975,000	1,519,845	22,933,983
Do.	1926		15	975,000	1,835,999	23,774,493
Do.	1927		15	975,000	1,383,290	24,175,969
Do.	1928		20	1,300,000	1,759,387	24,612,924
Do.	1929		20	1,300,000	2,212,011	25,503,096
Do.	1930		(1)	(1)	(1)	25,503,096
Total				11,375,000	17,139,914	

List of railroads controlled by the United States Steel Corporation or its subsidiaries, subject to recapture, showing the amounts paid into the contingent fund during the period from 1920 to 1930, inclusive, dividends paid on common stock, dividend rates and net income in each of those years, and total corporate surplus as of December 31, each year—Continued

Carrier	Year	Amount paid to contingent fund	Dividends		Net income	Total corporate surplus as of Dec. 31
			Rate (per cent)	Amount		
Duluth, Missabe & Northern Ry.	1920		75	\$3,084,375	\$5,326,415	\$33,021,405
Do.	1921		75	3,084,375	2,924,587	33,042,330
Do.	1922		75	3,084,375	6,321,785	36,852,802
Do.	1923		100	4,112,000	10,583,419	43,289,836
Do.	1924		80	3,290,000	4,407,747	44,435,445
Do.	1925		80	3,290,000	7,216,881	48,341,574
Do.	1926		100	4,112,500	8,151,140	52,369,944
Do.	1927		100	4,112,500	6,633,562	54,849,467
Do.	1928		100	4,112,500	7,892,954	58,592,882
Do.	1929		100	4,112,500	9,468,511	63,925,132
Do.	1930		100	4,112,500	7,409,202	67,143,142
Total		5,808,257		40,507,625	76,336,203	
Elgin, Joliet & Eastern	1920		4	400,000	1,123,358	4,814,085
Do.	1921		4	400,000	1,225,736	5,672,875
Do.	1922		4	400,000	1,665,852	6,951,107
Do.	1923		6	600,000	2,592,177	8,921,662
Do.	1924		4	400,000	269,758	8,800,262
Do.	1925		4	400,000	1,311,527	9,712,337
Do.	1926		6	600,000	2,060,574	11,169,912
Do.	1927		6	600,000	1,545,241	12,232,690
Do.	1928		6	600,000	1,196,876	12,753,492
Do.	1929		6	600,000	960,663	13,144,794
Do.	1930		6	600,000	1,657,994	14,214,263
Total		55,147		5,600,000	15,609,756	
Etna & Montrose R. R.	1920				-51,197	-85,883
Do.	1921				-23,608	-109,491
Do.	1922				-23,572	-133,063
Do.	1923				-24,361	-157,424
Do.	1924				-33,000	-190,424
Do.	1925				33,463	-157,786
Do.	1926				37,343	-120,443
Do.	1927				-745	-121,188
Do.	1928				-6,594	-132,684
Do.	1929				13,025	-119,658
Do.	1930				-10,673	-124,263
Total					-89,919	
Hannibal connecting	1920				-56,677	74,385
Do.	1921				-3,716	70,669
Do.	1922				33,769	104,441
Do.	1923				29,384	134,152
Do.	1924				10,028	144,179
Do.	1925				-5,476	138,698
Do.	1926				-2,834	135,774
Do.	1927				-11,341	123,834
Do.	1928				-8,726	115,108
Do.	1929				-3,495	111,613
Do.	1930				-5,890	106,870
Total		17,532			-25,474	
Johnstown & Stony Creek R. R.	1920				12,807	-10,901
Do.	1921				7,071	2,013
Do.	1922				42,782	43,416
Do.	1923				10,448	53,864
Do.	1924				4,536	58,400
Do.	1925				2,974	61,375
Do.	1926				17,602	78,977
Do.	1927				10,093	89,070
Do.	1928				-26,625	62,445
Do.	1929				-6,671	55,774
Do.	1930				-9,713	45,947
Total		1,162			65,304	

List of railroads controlled by the United States Steel Corporation or its subsidiaries, subject to recapture, showing the amounts paid into the contingent fund during the period from 1920 to 1930, inclusive, dividends paid on common stock, dividend rates and net income in each of those years, and total corporate surplus as of December 31, each year—Continued

Carrier	Year	Amount paid to contingent fund	Dividends		Net income	Total corporate surplus as of Dec. 31
			Rate (per cent)	Amount		
Lake Terminal R. R.	1920				-\$287,033	-\$386,227
Do.	1921				177,623	-203,854
Do.	1922				163,400	-45,446
Do.	1923				-3,987	-78,584
Do.	1924				-124,483	-198,450
Do.	1925				27,496	-124,372
Do.	1926				-1,106	-120,791
Do.	1927				172,975	52,128
Do.	1928				45,626	103,842
Do.	1929				179,515	278,354
Do.	1930				40,101	311,106
Total					391,700	
Newburgh & South Shore Ry.	1920				-263,591	439,535
Do.	1921				109,187	548,726
Do.	1922				181,092	729,819
Do.	1923				36,493	787,808
Do.	1924				148,167	918,366
Do.	1925				60,000	1,098,856
Do.	1926	6		\$90,000	270,480	1,369,336
Do.	1927	6		90,000	239,659	1,608,995
Do.	1928	6		90,000	388,495	1,997,490
Do.	1929	6		90,000	417,569	2,415,059
Do.	1930	3		45,000	319,291	2,734,350
Total					465,000	1,976,098
Northampton & Bath R. R.	1920				-73,109	-135,691
Do.	1921				-10,732	-146,522
Do.	1922				37,100	-8,449
Do.	1923				47,188	84,377
Do.	1924				33,469	117,758
Do.	1925				56,262	174,021
Do.	1926				46,840	220,861
Do.	1927				52,843	272,693
Do.	1928				45,827	318,520
Do.	1929				33,818	352,338
Do.	1930				33,378	385,716
Total					274,633	
Union Railroad (Pittsburgh, Pa.)	1920				91,246	6,806,837
Do.	1921	10		500,000	1,050,747	7,312,015
Do.	1922	15		750,000	2,867,558	9,429,368
Do.	1923	20		1,000,000	2,428,483	10,843,534
Do.	1924	10		500,000	479,064	10,834,070
Do.	1925	15		750,000	1,808,305	11,889,505
Do.	1926	20		1,000,000	1,862,782	12,705,529
Do.	1927	20		1,000,000	926,033	12,574,829
Do.	1928	25		1,250,000	2,359,754	13,608,817
Do.	1929	25		1,250,000	2,964,247	15,305,929
Do.	1930	15		750,000	1,133,331	15,699,363
Total					8,750,000	17,971,550
Youngstown & Northern Ry.	1920				-26,471	-78,917
Do.	1921				-5,971	-84,888
Do.	1922				61,745	-23,142
Do.	1923				4,439	-18,703
Do.	1924				14,396	-4,155
Do.	1925				43,216	38,937
Do.	1926				36,983	69,882
Do.	1927				8,560	78,422
Do.	1928				20,846	98,981
Do.	1929				-7,727	91,213
Do.	1930				-36,917	49,889
Total					113,099	
Total above reads					84,947,625	173,174,155

List of four large eastern coal-carrying railroads subject to recapture for period from 1920 to 1930, inclusive, showing for each year the dividends paid on common stock, dividend rates, net income, and the total corporate surplus as of December 31 each year

Carrier	Year	Dividends		Net income	Total corporate surplus as of Dec. 31
		Rate	Amount		
Chesapeake & Ohio	1920	Per cent 4	\$2,511,264	\$6,025,692	\$39,284,792
Do.	1921	2	1,255,632	4,309,932	42,964,169
Do.	1922	4	2,511,264	6,641,610	46,880,339
Do.	1923	4	2,591,032	9,069,050	54,563,993
Do.	1924	4	2,619,500	12,222,043	61,606,677
Do.	1925	4	3,035,885	20,152,289	75,363,700
Do.	1926	12	13,635,700	29,294,802	80,155,851
Do.	1927	9 1/2	11,160,634	28,607,315	106,503,482
Do.	1928	10	11,795,870	28,916,925	124,487,912
Do.	1929	10	13,329,142	32,192,416	142,232,518
Do.	1930	10	17,096,136	34,144,804	175,629,633
Total			81,542,119	211,606,858	
Hocking Valley	1920	4	439,980	353,315	10,111,216
Do.	1921	2	219,990	44,147	9,970,579
Do.	1922	4	439,980	712,207	10,253,832
Do.	1923	4	439,980	951,701	10,999,552
Do.	1924	4	439,980	2,362,655	12,923,319
Do.	1925	4	439,980	2,072,206	14,532,427
Do.	1926	12	1,319,940	2,746,459	16,000,631
Do.	1927	9 1/2	1,044,952	3,756,595	18,721,096
Do.	1928	10	1,099,952	4,641,471	22,251,752
Do.	1929	10	1,099,952	5,189,901	26,312,688
Do.	1930	8 1/2	962,456	770,292	26,114,197
Total			7,947,142	23,600,949	
Norfolk & Western	1920	7	8,503,989	12,496,788	75,757,773
Do.	1921	7	8,506,190	10,043,181	76,742,360
Do.	1922	8	9,960,779	14,554,989	80,535,807
Do.	1923	8	10,327,617	18,788,497	87,823,514
Do.	1924	8	10,608,539	14,646,812	90,792,607
Do.	1925	8	10,930,694	26,564,846	104,690,620
Do.	1926	10	13,920,718	36,897,506	129,053,334
Do.	1927	10	13,990,767	30,749,616	148,257,631
Do.	1928	10	14,020,370	30,830,034	164,418,547
Do.	1929	12	16,874,536	41,906,502	186,920,103
Do.	1930	12	16,877,796	31,997,481	202,140,584
Total			134,521,985	269,446,252	
Virginian	1920			3,287,462	14,217,171
Do.	1921			5,245,827	13,003,121
Do.	1922			3,408,033	19,463,085
Do.	1923	4	1,250,860	3,671,444	20,216,464
Do.	1924	4	1,250,860	3,315,141	20,733,561
Do.	1925	6	1,876,290	3,859,777	21,015,458
Do.	1926	7	2,189,005	6,717,047	23,685,108
Do.	1927	7	2,189,005	5,908,561	25,777,787
Do.	1928	7	2,189,005	4,237,471	26,173,213
Do.	1929	8	2,501,720	5,752,784	27,653,136
Do.	1930	8	2,501,720	4,455,373	27,843,790
Total			15,948,465	49,859,420	
Total above reads			239,959,711	554,513,479	

NOTE.—Nothing was paid into the contingent fund by these carriers.

INTERSTATE COMMERCE COMMISSION.  
BUREAU OF FINANCE,  
February 4, 1932.

Statement showing payments by carriers on account of excess net railway operating income under paragraph 6 of section 15-a of the interstate commerce act

	Excess income payments
Ashley, Drew & Northern Ry. Co.	\$5,811.11
Atlantic & Carolina R. R. Co.	364.57
Augusta Northern Ry. Co.	5,070.80
Augusta R. R. Co.	47.83
Bauxite & Northern Ry. Co.	11,851.72
The Bay Terminal R. R. Co.	2,449.74
Beaver, Meade & Englewood R. R. Co.	1,431.45
Bessemer & Lake Erie R. R. Co.	442,280.00
Birmingham Southern R. R.	31,371.43
Brimstone Railroad & Canal Co.	42,642.21
Conemaugh & Black Lick R. R. Co.	81,919.50
Cambria & Indiana R. R. Co.	18,630.46
Campbell's Creek R. R. Co.	548.53
Central Railway Co. of Arkansas	2,064.44
Chattahoochee Valley Ry.	16,140.12
Chicago & Illinois Midland Ry. Co.	199,219.75
Chicago, West Pullman & Southern Ry Co.	5,035.68
Collins & Glennville R. R. Co.	162.50
Cornwall R. R. Co.	177,091.48
Cowlitz, Chehalis & Cascade Ry.	3,000.00
Durham & Southern Ry. Co.	54,989.20
Dayton-Goose Creek Ry. Co.	183,127.38
Dayton Union Ry. Co.	963.81
DeKalb & Western R. R. Co.	10,025.47
Detroit & Toledo Shore Line R. R.	68,011.43
Detroit, Toledo & Ironton R. R.	239,461.63
Duluth, Missabe & Northern Ry. Co.	5,808,256.61
East Jersey R. R. & Terminal Co.	3,332.61
East Jordan & Southern R. R. Co.	4,753.61
Elgin, Joliet & Eastern Ry. Co.	55,147.23
Eric & Michigan Railway & Navigation Co.	2,297.08
Fordyce & Princeton R. R. Co.	3,697.50
Fort Worth Belt Ry. Co.	79,485.35
Franklin & Abbeville Ry. Co.	15,320.18
Genesee & Wyoming R. R. Co.	486,107.56
Gideon & North Island R. R. Co.	980.71
Hannibal Connecting R. R. Co.	17,532.49
Hutchinson & Northern Ry. Co.	154.25
Illinois Terminal Co.	800,000.00
Indiana Northern Ry. Co.	2,942.92
Indian Creek Valley Ry. Co.	3,852.92
Ironton R. R. Co.	574,639.16
Johnstown & Stony Creek R. R. Co.	1,162.49
Jonesboro, Lake City & Eastern R. R. Co.	42,450.00
Kanawha, Glen Jean & Eastern R. R.	5,460.88
Kinston Carolina R. R. Co.	62.91
Longview, Portland & Northern Ry. Co.	5,310.43
Lakeside & Marblehead R. R. Co.	5,478.45
Lancaster & Chester Ry. Co.	14,760.90
LaSalle & Bureau County R. R. Co.	18,421.85
Laurinburg & Southern R. R. Co.	2,518.23
Ligonier Valley R. R. Co.	63,165.27
Louisiana & Arkansas Ry. Co.	8,000.02
Louisiana & Mississippi Railroad & Transportation Co.	20.03
Louisville, New Albany & Corydon R. R. Co.	3,300.00
Ludington & Northern Ry. Co.	2,865.56
Middletown & Unionville R. R. Co.	51.71
Missouri & Illinois Bridge & Belt R. R. Co.	3,026.82
Mount Hood R. R. Co.	7,359.83

	Excess income payments
Mount Hope Mineral R. R. Co.	\$1,396.84
Natchez, Uria & Ruston Ry. Co.	530.95
Neame, Carson & Southern R. R. Co.	2,120.41
Nevada Northern Ry. Co.	39,729.26
New Orleans, Texas & Mexico Ry. Co.	5,248.35
Patapsco & Back Rivers R. R. Co.	50,355.00
Philadelphia, Bethlehem & New England	152,191.47
Pittsburgh, Lisbon & Western R. R. Co.	3,818.57
Port Huron & Detroit R. R. Co.	195,000.87
Potato Creek R. R. Co.	1,005.81
Richmond, Fredericksburg & Potomac R. R.	194,919.88
Rockport, Langdon & Northern Ry. Co.	441.10
South San Francisco Belt Ry.	1,374.54
San Joaquin & Eastern R. R. Co.	12,539.03
San Luis Central	246.12
St. Joseph Belt Ry. Co.	2,624.76
San Antonio Southern Ry. Co.	2,460.86
Santa Maria Valley Ry. Co.	3,500.00
Shreveport, Houston & Gulf R. R. Co.	1,674.27
Sioux City Terminal Ry. Co.	5,349.59
South Buffalo Ry. Co.	23,768.50
Steelton & Highspire R. R. Co.	42,935.90
Sugar Land Ry. Co.	27,435.67
Talbotton R. R. Co.	36.56
Tionesta Valley Ry. Co.	20,944.42
Toledo Terminal R. R. Co.	18,337.07
Trinity Valley Southern R. R. Co.	102.37
Tuckerton R. R. Co.	1,949.68
Tucson, Cornelia & Gila Bend R. R. Co.	11,997.34
Tuskegee R. R. Co.	2,480.90
Unity Railways Co.	141,849.59
Upper Merion & Plymouth R. R.	2,984.58
Warren & Ouachita Valley	14,444.45
Warrenton R. R. Co.	32,222.21
Washington, Brandywine & Point Lookout R. R.	85.19
Washington Run R. R. Co.	6,744.83
Wichita Falls & Southern R. R. Co.	369.71
Wyandotte Terminal R. R. Co.	8,241.17
Total	10,679,085.62

NET RAILWAY OPERATING INCOME, DIVIDENDS, ETC., OF SELECTED "RECAP-  
TURE" ROADS AND OF UNITED STATES STEEL CORPORATION ROADS, 1920-1930

NAME OF ROAD
Atchison, Topeka & Santa Fe system:
Atchison, Topeka & Santa Fe Railway Co.
Panhandle & Santa Fe Railway Co.
Gulf, Colorado & Santa Fe Railway Co.
Atlantic Coast Line system:
Atlantic Coast Line Railroad Co.
Atlanta & West Point Railroad Co.
Atlanta, Birmingham & Coast Railroad Co.
Charleston & Western Carolina Railway Co.
Clinchfield Railroad Co.
Georgia Railroad Lessee Organization.
Louisville & Nashville Railroad Co.
Nashville, Chattanooga & St. Louis Railway.
Western Railway of Alabama.
Baltimore & Ohio Railroad system:
Baltimore & Ohio Railroad Co.
Buffalo & Susquehanna Railroad Corporation.
Staten Island Rapid Transit Railway Co.
Buffalo, Rochester & Pittsburgh Railway Co.



Bangor & Aroostook Railroad Co.  
 Belt Railway Co. of Chicago.  
 Cambria & Indiana Railroad Co.  
 Chesapeake & Ohio Railway Co.  
 Chicago & Illinois Midland Railway Co.  
 Chicago River & Indiana Railroad Co.  
 Delaware & Hudson Railroad Corporation.  
 Detroit & Toledo Shore Line Railroad Co.  
 Detroit, Toledo & Ironton Railroad Co.  
 Florida East Coast Railway Co.  
 Great Northern Railway Co.  
 Hocking Valley Railway Co.  
 Illinois Terminal Co.  
 Kansas City, Mexico & Orient system:  
   Kansas City, Mexico & Orient Railway Co.  
   Kansas City, Mexico & Orient Railway Co. of Texas.  
 Kansas City Southern system:  
   Kansas City Southern Railway Co.  
   Texarkana & Fort Smith Railway Co.  
 Lehigh & New England Railroad Co.  
 Midland Valley Railroad Co.  
 Missouri-Kansas-Texas system:  
   Missouri-Kansas-Texas Railroad Co.  
   Missouri-Kansas-Texas Railroad Co. of Texas.  
 Monongahela Railway Co.  
 New Orleans Texas & Mexico system:  
   New Orleans Texas & Mexico Railway Co.  
   St. Louis, Brownsville & Mexico Railway Co.  
   Beaumont, South Lake & Western Railway Co.  
   Orange & Northwestern Railroad Co.  
 New York Central system:  
   New York Central Railroad Co.  
   Pittsburgh & Lake Erie Railroad Co.  
   Michigan Central Railroad Co.  
   Cincinnati Northern Railroad Co.  
   Cleveland, Cincinnati, Chicato & St. Louis Railway Co.  
   Evansville, Indianapolis & Terre Haute Railway Co.  
 New York, Chicago & St. Louis Railway Co.  
 New York, New Haven & Hartford system:  
   New York, New Haven & Hartford Railroad Co.  
   New York, Ontario & Western Railway Co.  
 Norfolk & Western Railway Co.  
 Pere Marquette Railway Co.  
 Reading system:  
   Reading Co.  
   Atlantic City Railroad Co.  
   Central Railroad Co. of New Jersey.  
 Richmond, Fredericksburg & Potomac Railroad Co.  
 St. Louis-San Francisco Railway Co.  
 St. Louis, San Francisco & Texas Railway Co.  
 Fort Worth & Rio Grande Railway Co.  
 St. Louis Southwestern system:  
   St. Louis Southwestern Railway Co.  
   St. Louis Southwestern Railway Co. of Texas.  
 Seaboard Air Line Railway Co.  
 Southern Pacific system:  
   Southern Pacific Co.  
   Northwestern Pacific Railroad Co.  
   Texas & New Orleans Railroad Co.

Southern Railway system:  
   Southern Railway Co.  
   Alabama Great Southern Railroad Co.  
   Cincinnati, New Orleans & Texas Pacific Railway Co.  
   Georgia Southern & Florida Railway Co.  
   Mobile & Ohio Railroad Co.  
   New Orleans & Northeastern Railroad Co.  
   Northern Alabama Railway Co.  
 Terminal Railroad Association of St. Louis.  
 Texas & Pacific Railway Co.  
 Toledo, St. Louis & Western.  
 Toledo Terminal Railroad Co.  
 Union Pacific system:  
   Union Pacific Railroad Co.  
   Oregon-Washington Railroad & Navigation Co.  
   Los Angeles & Salt Lake Railroad Co.  
   Oregon Short Line Railroad Co.  
   St. Joseph & Grand Island Railway Co.  
 Virginian Railway Co.  
 Wheeling & Lake Erie Railway Co.  
 Wabash system:  
   Wabash Railway Co.  
   Ann Arbor Railroad Co.  
 Western Maryland Railway Co.

## UNITED STATES STEEL CORPORATION ROADS

Bessemer & Lake Erie Railroad Co.  
 Birmingham Southern Railroad Co.  
 Carbon County Railway Co.  
 Chicago, Lake Shore & Eastern Railway Co.  
 Connellsville & Monongahela Railway Co.  
 Donora Southern Railroad Co.  
 Duluth & Iron Range Railroad Co.  
 Duluth, Missabe & Northern Railway Co.  
 Elgin, Joliet & Eastern Railway Co.  
 Etna & Montrose Railroad Co.  
 Hannibal Connecting Railroad Co.  
 Interstate Transfer Railway Co.  
 Johnstown & Stony Creek Railroad Co.  
 Lake Terminal Railroad Co.  
 McKeesport Connecting Railroad Co.  
 Monongahela Southern Railroad Co.  
 Newburgh & South Shore Railway Co.  
 Northampton & Bath Railroad Co.  
 St. Clair Terminal Railroad Co.  
 Spirit Lake Transfer Railway Co.  
 Union Railroad Co. (of Pennsylvania).  
 Youngstown & Northern Railroad Co.  
 Youghiogheny Northern Railway Co.

## Atchison, Topeka &amp; Santa Fe Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920.....	\$19,649,795	Common, 6; preferred, 5.	\$27,270,026	\$348,889,200	\$37,608,794	10.78
1921.....	19,727,105	do.	40,234,261	349,571,200	39,133,684	11.19
1922.....	19,814,345	do.	35,509,010	351,226,200	38,536,655	10.97
1923.....	20,117,930	do.	40,815,194	356,592,200	41,923,366	11.76
1924.....	20,734,234	Common, 6½; preferred, 5.	38,348,299	356,582,300	41,217,207	11.56
1925.....	22,477,305	Common, 7; preferred, 5.	45,600,325	356,582,300	43,981,682	12.33
1926.....	24,220,376	Common, 7¾; preferred, 5.	55,493,701	356,582,300	60,095,342	16.85
1927.....	29,449,590	Common, 10; preferred, 5.	45,893,631	356,582,300	47,622,296	13.36
1928.....	30,371,307	do.	47,553,763	365,802,100	48,344,086	13.22
1929.....	30,371,570	do.	58,765,932	365,802,100	58,772,690	16.07
1930.....	30,380,401	do.	38,443,607	366,339,700	37,026,254	10.11

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$38,443,607	\$13,838,469	\$52,282,076	\$15,255,842	3.43
1931 <sup>1</sup> .....	31,449,274	3,888,276	35,337,550	13,320,767	2.65

<sup>1</sup> Includes Atchison, Topeka & Santa Fe Ry. Co.; Gulf, Colorado & Santa Fe Ry. Co. and Panhandle & Santa Fe Ry. Co.

TOTAL CORPORATE SURPLUS				
Year 1920.....				\$172,552,334
Year 1929.....				398,680,148
Year 1930.....				405,334,383

## Panhandle &amp; Santa Fe Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920.....			\$1,227,562	\$3,278,000	\$431,868	
1921.....			1,877,411	3,278,000	256,123	7.81
1922.....			236,615	3,278,000	1,194,943	
1923.....			1,258,046	3,278,000	135,656	
1924.....			2,693,970	3,278,000	1,495,497	45.62
1925.....			2,788,766	3,278,000	1,697,907	51.80
1926.....	\$5,384,281	Common, 164.26	4,059,506	3,278,000	2,708,860	82.64
1927.....	1,086,860	Common, 33.16	2,749,567	3,278,000	1,132,305	34.54
1928.....	582,824	Common, 17.78	2,485,297	3,278,000	588,995	17.97
1929.....	1,591,053	Common, 48.54	3,859,178	3,278,000	1,597,153	48.72
1930.....			2,263,892	3,278,000	433,180	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$2,263,892	\$41,730	\$2,305,622	\$2,758,802	0.84
1931 <sup>1</sup> .....					

<sup>1</sup> Included in Atchison, Topeka & Santa Fe Ry. Co.

TOTAL CORPORATE SURPLUS				
Year 1920.....				\$1,180,885
Year 1929.....				76,563
Year 1930.....				361,765

## Gulf, Colorado &amp; Santa Fe Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920.....			\$1,603,604	\$10,000,000	\$129,627	
1921.....			6,339,396	10,000,000	162,924	1.63
1922.....			4,192,458	10,000,000	3,667,268	
1923.....			3,965,151	10,000,000	927,471	
1924.....			6,241,010	10,000,000	1,986	.02
1925.....			5,271,601	10,000,000	457,557	4.58
1926.....			6,525,674	10,000,000	2,791,139	27.91
1927.....			5,959,907	10,000,000	2,193,828	21.94
1928.....			5,293,466	10,000,000	1,560,726	15.61
1929.....			6,033,220	10,000,000	2,236,905	22.37
1930.....			4,168,968	10,000,000	299,507	3.00

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$4,168,968	\$271,546	\$4,440,514	\$4,141,007	1.07
1931 <sup>1</sup> .....					

<sup>1</sup> Included in Atchison, Topeka & Santa Fe Ry. Co.

TOTAL CORPORATE SURPLUS				
1920.....				\$3,952,894
1929.....				703,687
1930.....				1,008,953

## Atlantic Coast Line Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920.....	\$4,810,869	Common, 7; preferred, 5.	\$1,497,366	\$68,782,900	\$7,960,713	11.57
1921.....	4,810,869	do.	5,039,567	68,782,900	1,800,218	2.62
1922.....	4,810,869	do.	14,416,368	68,782,900	11,604,074	16.87
1923.....	4,810,869	do.	15,496,609	68,782,900	13,002,371	18.90
1924.....	5,496,731	Common, 8; preferred, 5.	15,179,185	68,782,900	13,275,845	19.30
1925.....	6,182,593	Common, 9; preferred, 5.	20,184,549	68,782,900	18,416,912	26.78
1926.....	6,868,455	Common, 10; preferred, 5.	17,585,807	68,782,900	16,519,873	24.02
1927.....	8,244,105	do.	10,271,334	82,539,400	9,855,909	11.94
1928.....	8,244,105	do.	9,895,364	82,539,400	8,443,604	10.23
1929.....	8,244,105	do.	12,874,207	82,539,400	11,921,507	14.44
1930.....	8,244,105	do.	7,241,304	82,539,400	6,264,591	7.58

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$7,241,304	\$6,617,810	\$13,849,114	\$7,604,523	1.82
1931.....	4,748,109	3,529,585	8,277,694	7,331,692	1.13

TOTAL CORPORATE SURPLUS				
Year 1920.....				\$48,185,391
Year 1929.....				101,660,455
Year 1930.....				96,982,512

## Atlanta &amp; West Point Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$147,816	Common, 6.....	\$275,562	\$2,463,600	\$439,494	17.84
1921.....	147,816	do.....	130,623	2,463,600	120,422	4.89
1922.....	147,816	do.....	230,690	2,463,600	268,333	10.89
1923.....	147,816	do.....	345,713	2,463,600	348,104	14.13
1924.....	172,452	Common, 7.....	388,738	2,463,600	456,175	18.52
1925.....	197,088	Common, 8.....	462,206	2,463,600	540,246	21.93
1926.....	189,808	Common, 8.....	286,038	2,463,600	322,371	13.09
1927.....	197,088	do.....	351,417	2,463,600	381,177	15.47
1928.....	197,088	do.....	316,310	2,463,600	409,759	16.63
1929.....	197,088	do.....	200,435	2,463,600	249,877	10.14
1930.....	197,088	do.....	14,502	2,463,600	64,000	2.60

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$14,502	\$51,074	\$65,576	\$1,566	41.87
1931.....	150,386	32,318	118,067	1,608	

<sup>1</sup> Includes a 20 per cent extra dividend of \$492,720.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$2,220,140
Year 1929.....	3,431,234
Year 1930.....	3,294,141

Atlanta, Birmingham & Coast Railroad Co.<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$1,852,328	\$30,000,000	\$63,821	
1921.....			1,771,056	30,000,000	2,001,391	
1922.....			460,567	30,000,000	695,070	
1923.....			162,492	30,000,000	396,759	
1924.....			107,719	30,000,000	244,901	
1925.....			71,498	30,000,000	304,951	
1926.....			145,420	30,000,000	126,841	
1927.....			66,145	9,230,196	19,773	
1928.....			183,371	27,180,712	193,627	
1929.....			257,492	27,180,712	225,990	
1930.....			659,657	27,180,712	598,644	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$659,657	\$67,594	\$592,063	\$6,481	
1931.....	593,258	51,501	501,757	5,928	

<sup>1</sup> Includes returns for Atlanta, Birmingham & Atlantic Ry. Co. to Dec. 31, 1926, and its successor Atlanta, Birmingham & Coast R. R. Co. subsequent thereto.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$563,037
Year 1929.....	557,803
Year 1930.....	952,151

## Charleston &amp; Western Carolina Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$72,000	Common, 6.....	\$636,713	\$1,200,000	\$4,490	0.37
1921.....		do.....	289,233	1,200,000	535,777	
1922.....	72,000	Common, 6.....	516,337	1,200,000	292,461	24.37
1923.....	72,000	do.....	449,993	1,200,000	196,371	16.36
1924.....	72,000	do.....	568,596	1,200,000	282,627	23.55
1925.....	72,000	do.....	753,626	1,200,000	478,946	39.91
1926.....	72,000	do.....	608,321	1,200,000	335,599	27.97
1927.....	72,000	do.....	504,574	1,200,000	232,420	19.37
1928.....	72,000	do.....	546,528	1,200,000	289,517	24.13
1929.....	72,000	do.....	460,157	1,200,000	203,361	16.95
1930.....		do.....	299,006	1,200,000	28,576	3.38

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$299,006	\$49,771	\$348,777	\$320,201	1.09
1931.....	359,240	37,420	396,660	318,631	1.24

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$2,655,464
Year 1929.....	4,460,790
Year 1930.....	4,464,773

Clinchfield Railroad Co.<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$2,393,065	\$36,500,000	\$927,825	2.54
1921.....			2,444,053	36,500,000	819,351	2.24
1922.....			2,798,079	36,500,000	1,220,500	3.34
1923.....			2,589,813	36,500,000	1,040,191	2.85
1924.....			2,639,913	25,000,000	1,549,132	6.20
1925.....			3,262,439		1,294,285	
1926.....			3,513,953		127,080	
1927.....			3,255,029		992,448	
1928.....			3,000,430		605,567	
1929.....			2,713,355		334,191	
1930.....			1,927,195		482,062	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$1,927,195	\$161,863	\$2,089,058	\$2,551,109	0.82
1931.....	1,460,070	76,807	1,536,877	2,639,631	.61

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$3,617,974
Year 1929.....	2,072,899
Year 1930.....	799,254

<sup>1</sup> Represents returns for the Carolina, Clinchfield & Ohio Ry. Co. to Dec. 31, 1924, and its successor, the Clinchfield Railroad Co., subsequent thereto.



## Georgia Railroad, lessee organization

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$255,443		\$12,685	
1921			146,358		663,890	
1922			811,839		44,497	
1923			1,193,094		372,564	
1924			871,298		70,364	
1925			1,037,822		304,607	
1926			1,373,183		648,411	
1927			1,060,028		342,137	
1928			912,939		205,966	
1929			938,211		216,803	
1930			735,005		30,968	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$735,005	\$25,431	\$760,436	\$729,468	1.04
1931	545,104	27,985	573,089	720,490	0.80

TOTAL CORPORATE SURPLUS					
Year 1920					\$1,611,819
Year 1929					3,339,155
Year 1930					3,360,771

## Louisville &amp; Nashville Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$5,040,000	Common, 7	\$1,672,511	\$72,000,000	\$7,972,751	11.07
1921	5,040,000	do	4,143,621	72,000,000	9,677,748	13.44
1922	5,040,000	do	17,637,714	72,000,000	11,616,622	16.13
1923	5,040,000	Common, 6 3/4	20,673,143	117,000,000	14,132,794	12.08
1924	7,020,000	Common, 6	22,291,374	117,000,000	18,700,711	16.00
1925	7,020,000	do	26,938,619	117,000,000	16,726,241	14.30
1926	8,190,000	Common, 7	27,039,319	117,000,000	14,323,220	12.24
1927	8,190,000	do	23,876,834	117,000,000	13,726,542	11.73
1928	8,190,000	do	22,205,083	117,000,000	6,606,082	5.65
1929	8,190,000	do	20,828,220	117,000,000		
1930	8,190,000	do	14,006,913	117,000,000		

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931					

1930	\$14,006,913	\$3,722,859	\$17,729,772	\$11,123,690	1.59
1931	9,519,324	2,386,036	11,905,360	10,844,774	1.10

<sup>1</sup> Includes stock dividend of 62 1/2 per cent, \$45,000,000.

TOTAL CORPORATE SURPLUS					
Year 1920					\$82,985,890
Year 1929					97,908,682
Year 1930					95,051,866

## Nashville, Chattanooga &amp; St. Louis Railway

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$1,120,000	Common, 7.....	\$560,043	\$16,000,000	\$361,744	5.39
1921.....	1,120,000	do.....	1,071,618	16,000,000	477,368	10.50
1922.....	1,120,000	do.....	3,094,209	16,000,000	1,680,577	10.18
1923.....	1,120,000	do.....	3,061,971	16,000,000	1,628,806	9.24
1924.....	1,120,000	do.....	3,433,767	16,000,000	1,479,191	15.81
1925.....	1,120,000	do.....	3,937,805	16,000,000	2,529,042	15.70
1926.....	1,120,000	do.....	4,018,155	16,000,000	2,511,258	14.54
1927.....	1,120,000	do.....	3,841,261	16,000,000	2,325,821	15.88
1928.....	1,120,000	do.....	4,232,896	16,000,000	2,972,688	22.59
1929.....	1,120,000	do.....	4,845,801	16,000,000	3,615,004	2.60
1930.....	1,099,911	Common, 6-7.....	2,112,288	25,600,000	922,137	
Year		Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....		\$2,112,288	\$439,382	\$2,551,670	\$1,629,533	1.57
1931.....		822,215	268,910	1,091,125	1,578,514	5.69

<sup>1</sup> Includes stock dividend of 60 per cent, \$9,000,000.

TOTAL CORPORATE SURPLUS					
Year 1920					\$15,098,195
Year 1929					22,648,493
Year 1930					12,417,650

## Western Railway of Alabama

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$180,000	Common 6	\$198,187	\$3,000,000	\$253,313	8.44
1921	180,000	do	222,011	3,000,000	217,739	7.26
1922	180,000	do	462,852	3,000,000	448,384	14.95
1923	180,000	do	505,888	3,000,000	471,551	15.72
1924	210,000	Common 7	673,735	3,000,000	678,117	22.60
1925	240,000	Common 8	822,976	3,000,000	828,022	27.60
1926	240,000	Common 33	641,764	3,000,000	602,672	20.00
1927	240,000	Common 8	593,593	3,000,000	544,801	18.16
1928	240,000	do	677,723	3,000,000	729,686	24.32
1929	240,000	do	434,117	3,000,000	422,816	14.09
1930	240,000	do	325,919	3,000,000	326,830	10.59

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$325,919	\$71,036	\$396,955	\$70,126	5.66
1931	6,326	49,897	56,223	60,607	.93

TOTAL CORPORATE SURPLUS					
Year 1920					\$1,538,252
Year 1929					3,767,869
Year 1930					3,836,668

## Baltimore &amp; Ohio Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$2,354,531	Preferred 4	\$11,861,276	\$210,808,824	\$7,245,481	3.44
1921	2,354,529	do	21,853,546	210,808,729	6,388,891	3.03
1922	2,354,527	do	23,735,005	210,808,609	4,375,373	2.08
1923	6,153,097	Preferred 4; common 2½	42,133,129	210,808,610	22,422,036	10.64
1924	9,951,865	Common 5; preferred 4	38,084,324	210,808,610	16,319,690	7.74
1925	9,951,797	do	43,084,087	210,808,534	20,793,508	9.86
1926	11,471,253	Common 6; preferred 4	50,805,337	210,808,534	28,494,294	13.53
1927	13,319,020	do	44,817,227	274,051,035	22,632,345	8.26
1928	15,265,803	do	49,387,716	374,051,035	29,100,930	10.62
1929	17,722,311	Common 6.50; preferred 4	49,184,110	315,158,615	28,767,909	9.13
1930	20,295,215	Common 7; preferred 4	40,248,613	315,158,595	21,423,770	6.80
Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges	
1930	\$40,248,613	\$11,243,924	\$51,492,537	\$30,068,767	1.71	
1931	26,230,851	7,788,191	34,019,042	31,479,304	1.08	

## TOTAL CORPORATE SURPLUS

Year 1920	\$33,806,609
Year 1929	114,468,786
Year 1930	109,861,329

## Buffalo &amp; Susquehanna Railroad Corporation

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$460,000	Common 10; preferred 4.	\$311,777	\$7,000,000	\$791,435	11.31
1921	370,000	Common 7; preferred 4.	70,038	7,000,000	197,157	2.82
1922	670,000	Common 17; preferred 4.	247,555	7,000,000	733,474	10.48
1923	670,000	do.	564,699	7,000,000	852,866	12.18
1924	445,000	Common 9½; preferred 4.	266,138	7,000,000	318,930	4.56
1925	340,000	Common 6; preferred 4.	111,919	7,000,000	79,033	1.13
1926	160,000	do.	49,398	7,000,000	186,720	2.68
1927	160,000	do.	161,405	7,000,000	145,483	2.08
1928	160,000	do.	321,448	7,000,000	300,902	4.30
1929	160,000	do.	344,329	7,000,000	286,837	4.10
1930	160,000	do.	473,084	7,000,000	449,458	6.42
Year		Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930		\$743,084	\$148,408	\$621,492	\$172,034	3.61
1931		323,892	185,973	509,865	167,013	3.05

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,836,825
Year 1929	1,927,111
Year 1930	2,251,616

## Staten Island Rapid Transit Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			*711,914	\$500,000		
1921			566,735	500,000		
1922			550,543	500,000		
1923			274,610	500,000		
1924			311,160	500,000		
1925			292,018	500,000		
1926			153,786	500,000		
1927			299,186	500,000		
1928			349,650	500,000		
1929			460,515	500,000		
1930			298,132	500,000		
Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges	
1930	\$298,132	\$184,734	\$482,866	\$482,866	1.00	
1931	159,660	323,206	482,866	482,866	1.00	

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,856,281
Year 1929	2,481,967
Year 1930	2,342,271

## Buffalo, Rochester &amp; Pittsburgh Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31— 1920.....	\$780,000	Common, 4; preferred, 6.	\$1, 663, 772	\$16, 500, 000	\$2, 325, 760	14. 10
1921.....	780, 000	do.....	752, 840	16, 500, 000	946, 598	-----
1922.....	780, 000	do.....	549, 098	16, 500, 000	1, 191, 165	-----
1923.....	780, 000	do.....	2, 985, 651	16, 500, 000	1, 081, 499	6. 55
1924.....	780, 000	do.....	2, 641, 407	16, 500, 000	621, 883	3. 77
1925.....	780, 000	do.....	2, 650, 757	16, 500, 000	661, 596	4. 01
1926.....	780, 000	do.....	3, 292, 978	16, 500, 000	1, 328, 295	8. 05
1927.....	780, 000	do.....	1, 920, 678	16, 500, 000	1, 277	. 01
1928.....	780, 000	do.....	2, 787, 638	16, 500, 000	858, 473	5. 20
1929.....	780, 000	do.....	2, 902, 763	16, 500, 000	1, 008, 698	6. 11
1930.....	570, 000	Common, 2; preferred, 6.	2, 227, 505	16, 500, 000	365, 776	2. 22
<hr/>						
Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges	
1930.....	\$2, 227, 505	\$269, 270	\$2, 496, 775	\$2, 130, 999	1. 17	
1931.....	1, 335, 706	181, 781	1, 517, 487	2, 101, 089	. 72	

## TOTAL CORPORATE SURPLUS

Year 1920	\$10,396,065
Year 1929	8,067,080
Year 1930	7,837,698

## RAILROAD LEGISLATION

## Bangor &amp; Aroostook Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920	\$398,000	Common, 4; preferred, 7	\$720,217	\$7,340,000	\$550,367	7.50
1921	398,000	do	1,293,196	7,340,000	379,264	5.17
1922	458,900	Common, 4; preferred, 8½	1,655,132	7,340,000	676,473	9.22
1923	465,550	Common, 5½; preferred, 7	1,712,074	7,340,000	594,911	8.11
1924	465,550	Common, 5½; preferred, 7	1,739,137	7,340,000	722,750	9.85
1925	475,200	Common, 6; preferred, 7	1,707,091	7,340,000	723,628	9.86
1926	475,200	do	1,890,047	7,340,000	914,326	12.46
1927	545,641	Common, 6½; preferred, 7	2,086,304	8,808,000	1,139,723	12.94
1928	616,560	Common, 7; preferred, 7	1,899,190	8,808,000	983,077	11.16
1929	642,550	do	2,277,600	10,438,890	1,398,433	13.40
1930	743,839	Common, 7.05; preferred, 7	2,335,907	10,599,600	1,557,761	14.74

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$2,335,907	\$100,600	\$2,436,507	\$878,746	2.77
1931	1,388,817	55,119	1,443,936	818,417	1.76

Year 1920	TOTAL CORPORATE SURPLUS	\$1,856,251
Year 1929		4,740,670
Year 1930		5,520,255

## Belt Railway Co. of Chicago

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920	\$172,800	Common 6	\$1,591,708	\$2,880,000	\$172,800	6.00
1921	172,800	do	1,596,984	2,880,000	172,800	6.00
1922	172,800	do	1,652,490	2,880,000	259,530	9.01
1923	173,583	do	1,847,357	3,120,000	387,374	12.42
1924	187,200	do	1,756,909	3,120,000	278,402	8.92
1925	187,200	do	1,401,234	3,120,000	286,919	9.20
1926	187,200	do	1,741,506	3,120,000	196,776	6.31
1927	187,200	do	1,709,313	3,120,000	187,200	6.00
1928	187,200	do	1,760,958	3,120,000	187,200	6.00
1929	374,400	Common, 12	1,804,043	3,120,000	193,174	6.19
1930	187,200	Common, 6	1,807,727	3,120,000	187,200	6.00

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$1,807,727	\$159,416	\$1,967,143	\$1,779,943	1.11
1931	1,269,145	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Data not available.

Year 1920	TOTAL CORPORATE SURPLUS	\$13,537
Year 1929		165,541
Year 1930		165,542

## RAILROAD LEGISLATION

## Cambria &amp; Indiana Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920	\$620,000	Common 39½	\$563,927	\$2,000,000	\$410,407	20.52
1921		do	350,808	1,500,000	210,200	14.01
1922	150,000	Common 10	475,387	1,500,000	343,281	22.89
1923	150,000	do	567,121	1,500,000	418,794	27.92
1924	150,000	do	489,625	1,500,000	251,801	16.79
1925	150,000	do	642,079	1,500,000	438,125	29.21
1926	150,000	do	754,703	1,500,000	564,117	37.61
1927	375,000	Common 25	703,737	1,500,000	539,525	35.97
1928	240,000	Common 16	630,500	1,500,000	481,123	32.07
1929	390,000	Common 26	1,145,525	1,500,000	1,049,543	69.97
1930	540,000	Common 36	1,120,709	1,500,000	1,058,310	70.55

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$1,120,709	\$92,054	\$1,212,763	\$154,453	7.85
1931					

<sup>1</sup> Includes \$500,000 stock dividend at 33½ per cent.<sup>2</sup> Figures not available.

Year 1920	TOTAL CORPORATE SURPLUS	\$483,085
Year 1929		3,313,985
Year 1930		3,832,777

## Chesapeake &amp; Ohio Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920	\$2,511,264	Common, 4	\$9,473,306	\$62,786,000	\$6,025,692	9.60
1921	1,255,632	Common, 2	13,660,926	62,786,300	4,309,932	6.86
1922	2,715,334	Common, 4; preferred, 1½	14,410,330	75,344,500	6,641,610	8.81
1923	3,407,334	Common, 4; preferred, 1½	19,135,356	77,977,625	9,099,050	11.67
1924	3,435,803	do	21,892,920	79,817,625	12,222,043	15.31
1925	3,851,133	do	30,018,071	102,793,180	20,152,269	19.60
1926	13,958,755	Common, 12; preferred, 6½	37,011,025	118,998,292	29,294,802	24.62
1927	11,260,412	Common, 9½; preferred, 6½	36,320,830	118,998,292	28,607,315	24.04
1928	11,863,182	Common, 10; preferred, 6½	36,323,594	118,998,292	28,916,925	24.30
1929	13,362,512	do	37,881,634	148,620,362	32,192,416	21.66
1930	17,110,449	do	39,514,678	191,447,942	34,144,804	17.84

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$39,514,678	\$5,071,182	\$44,585,860	\$10,441,056	4.27
1931	35,329,943	2,435,723	37,765,666	10,920,433	3.46

Year 1920	TOTAL CORPORATE SURPLUS	\$39,284,792
Year 1929		142,232,518
Year 1930		175,626,633



## Chicago &amp; Illinois Midland Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$382,235	\$1,000,000	\$155,240	15.52
1921.....			268,803	1,000,000	37,738	3.77
1922.....			47,979	1,000,000	800,155	—
1923.....			480,383	1,000,000	254,721	25.47
1924.....			443,161	1,000,000	76,934	7.69
1925.....			494,420	1,000,000	278,394	27.84
1926.....			375,962	1,000,000	1,880	.12
1927.....			503,044	1,600,000	714,840	—
1928.....			530,716	1,600,000	79,852	4.99
1929.....			563,571	1,600,000	34,865	2.18
1930.....			565,496	1,600,000	18,026	1.13

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$565,496	\$220,946	\$786,442	\$768,416	1.02
1931 <sup>1</sup> .....	470,194	241,666	711,860	828,615	.86

<sup>1</sup> Figures taken from preliminary report of capitalization and income.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$390,965
Year 1929.....	1,016,410
Year 1930.....	1,000,401

## Chicago River &amp; Indiana Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$30,000	Common, 6.....	\$147,274	\$500,000	\$185,511	37.10
1921.....	30,000	do.....	202,842	500,000	176,396	35.28
1922.....	325,000	Common, 65.....	2,074,555	500,000	1,309,747	261.95
1923.....	45,000	Common, 9.....	3,359,727	500,000	1,328,002	265.60
1924.....	50,000	Common, 10.....	3,208,855	500,000	1,074,763	214.95
1925.....	50,000	do.....	2,863,694	500,000	805,991	161.20
1926.....	50,000	do.....	3,306,406	500,000	1,171,909	234.38
1927.....	50,000	do.....	3,153,260	500,000	1,045,112	209.02
1928.....	50,000	do.....	3,435,220	500,000	1,377,134	275.43
1929.....	2,550,000	Common, 510.....	3,659,575	500,000	1,494,650	298.93
1930.....	2,550,000	Common, 110.....	3,204,483	500,000	1,047,056	209.41

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$3,204,483	\$138,539	\$3,343,022	\$2,295,966	1.46
1931.....	2,868,999	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Includes \$300,000 representing an extra dividend of 60 per cent.<sup>2</sup> Includes \$2,500,000 representing an extra dividend of 500 per cent.<sup>3</sup> Includes \$500,000 representing an extra dividend of 100 per cent.<sup>4</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$682,857
Year 1929.....	6,453,888
Year 1930.....	7,011,925

Delaware & Hudson Railroad Corporation<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$3,825,234	Common, 9.....	\$1,890,005	\$42,502,600	\$5,286,940	12.44
1921.....	3,825,234	do.....	7,076,803	42,502,600	5,535,559	12.55
1922.....	3,825,234	do.....	1,216,609	42,502,600	985,772	—
1923.....	3,825,234	do.....	6,512,844	42,502,600	5,063,380	11.91
1924.....	3,825,234	do.....	7,431,880	42,502,600	5,975,273	14.06
1925.....	3,825,234	do.....	6,823,039	42,502,600	5,234,977	12.32
1926.....	3,836,902	do.....	9,927,015	43,092,300	8,303,277	19.27
1927.....	4,271,900	do.....	6,710,504	51,573,500	3,071,861	5.96
1928.....	4,641,645	do.....	7,062,966	51,573,500	6,384,228	12.38
1929.....	4,641,615	do.....	8,104,740	51,573,500	7,808,713	15.14
1930.....	1,676,144	( <sup>1</sup> )	5,868,962	28,473,019	2,178,003	7.65

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$5,868,962	\$1,019,612	\$6,888,574	\$4,710,571	1.46
1931.....	4,279,682	269,400	4,549,082	4,752,686	.96

<sup>1</sup> Represents returns for the Delaware & Hudson Co. to Mar. 31, 1930, and its successor the Delaware & Hudson R. R. Corporation subsequent thereto.<sup>2</sup> 34 per cent on par value stock of the Delaware & Hudson Co. and \$1 per share on nonpar value stock of the Delaware & Hudson R. R. Corporation.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$30,533,367
Year 1929.....	86,439,074
Year 1930.....	56,654,006

## Detroit &amp; Toledo Shore Line Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$114,240	Common, 8.....	\$59,940	\$1,428,000	\$243,555	17.06
1921.....	114,240	do.....	337,575	1,428,000	207,014	14.50
1922.....	671,390	Common, 47.01.....	745,006	1,428,000	765,537	53.61
1923.....	228,480	Common, 16.....	603,780	1,428,000	522,219	36.57
1924.....	114,240	Common, 8.....	318,457	1,428,000	284,097	19.89
1925.....	114,240	do.....	844,572	1,428,000	648,498	45.41
1926.....	485,520	Common, 34.....	1,050,560	1,428,000	967,516	67.75
1927.....	485,520	do.....	973,469	1,428,000	892,964	62.53
1928.....	485,520	do.....	1,143,275	1,428,000	1,065,754	74.63
1929.....	485,520	do.....	739,900	1,428,000	601,418	47.72
1930.....	485,520	do.....	707,466	1,428,000	812,439	56.89

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$707,466	\$291,453	\$998,919	\$186,480	5.36
1931 <sup>1</sup> .....	444,501	48,248	492,749	86,187	5.72

<sup>1</sup> Figures taken from Preliminary Report of Capitalization and Income.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$880,824
Year 1929.....	3,796,337
Year 1930.....	4,499,505

## Detroit, Toledo &amp; Ironton Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$1,769,469	\$12,489,998	\$1,806,584	
1921			43,322	12,489,998	580,566	
1922			188,584	12,489,948	1,018,742	
1923			1,786,924	12,489,948	1,417,086	11.35
1924			2,554,761	12,489,948	1,720,984	13.78
1925			3,614,643	12,489,948	2,072,789	16.60
1926			2,075,275	12,489,948	1,400,273	11.28
1927			635,924	12,489,948	184,010	
1928			2,635,598	12,489,948	1,975,778	15.82
1929			4,501,660	12,489,948	1,734,618	13.89
1930	\$879,400	Preferred, 6; common, 8.	3,156,869	12,490,000	1,746,487	13.98

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$3,156,869	\$246,109	\$3,402,978	\$1,656,491	2.05
1931	964,712	82,740	1,037,452	1,600,083	.65

## TOTAL CORPORATE SURPLUS

Year 1920					\$1,751,681
Year 1929					5,797,223
Year 1930					5,559,071

## Florida East Coast Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$1,826,170	\$12,500,000	\$1,387,700	11.10
1921			1,091,101	12,500,000	766,705	6.13
1922			2,699,263	12,500,000	1,991,872	15.93
1923			3,165,911	12,500,000	2,757,673	22.06
1924			4,411,515	37,500,000	3,517,492	9.38
1925			5,337,049	37,500,000	3,840,370	10.24
1926			5,167,479	37,500,000	2,783,930	7.42
1927			592,205	37,500,000	1,774,762	
1928			1,426,619	37,500,000	1,697,485	
1929			1,637,961	37,500,000	1,325,269	
1930			1,040,154	37,500,000	1,098,312	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930-----	\$1,040,154	\$150,564	\$1,190,718	\$3,189,030	0.37
1931-----	664,636	68,096	732,732	3,148,462	.23

## TOTAL CORPORATE SURPLUS

Year 1920					\$4,953,540
Year 1929					17,564,752
Year 1930					14,126,370

## Great Northern Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$17,462,916	Preferred, 7	\$3,017,647	\$249,477,150	\$19,317,596	7.74
1921	17,462,974	Preferred, 9	12,866,411	249,477,150	28,469,926	11.41
1922	13,097,264	Preferred, 5 1/4	17,276,598	249,477,150	10,865,672	4.36
1923	12,473,605	Preferred, 5	24,731,992	249,477,150	12,840,226	5.15
1924	12,473,618	do	24,201,287	249,477,150	17,041,600	7.19
1925	12,369,145	do	28,276,183	248,916,550	21,435,396	8.61
1926	12,445,855	do	31,280,429	248,934,950	25,943,258	10.42
1927	12,447,353	do	29,202,540	248,967,250	22,985,922	9.23
1928	12,449,203	do	31,294,069	249,004,650	25,168,230	10.11
1929	12,450,225	do	32,457,523	248,979,450	25,668,551	10.31
1930	18,673,035	Preferred 7 1/4	21,912,508	248,938,450	18,036,748	7.25

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$21,912,508	\$15,528,317	\$37,440,825	\$19,404,077	1.93
1931	12,609,420	7,617,114	20,286,534	19,571,696	1.04

## TOTAL CORPORATE SURPLUS

Year 1920					\$122,749,921
Year 1929					165,685,738
Year 1930					164,905,196

## Hocking Valley Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$439,980	Common, 4	\$1,377,164	\$10,999,500	\$353,315	3.21
1921	219,990	Common, 2	1,560,741	10,999,500	44,147	.40
1922	439,980	Common, 4	2,245,067	10,999,500	712,207	6.47
1923	439,980	do	2,454,068	10,999,500	951,701	8.65
1924	439,980	do	3,618,080	10,999,500	2,362,655	21.48
1925	439,980	do	3,619,213	10,999,500	2,072,206	18.84
1926	1,319,940	do	4,197,035	10,999,500	2,746,459	24.97
1927	1,044,952	Common, 1 1/2	4,930,766	10,999,500	3,756,595	34.15
1928	1,099,950	Common, 10	5,624,746	10,999,500	4,641,471	42.20
1929	1,099,950	do	6,035,440	10,999,500	5,189,901	47.18
1930	962,456	Common, 8 3/4	1,000,881	10,999,500	770,292	7.00

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$1,000,881	\$151,934	\$1,152,815	\$382,523	3.01
1931					

<sup>1</sup> Covers operations for four months ended Apr. 30, 1930, sold to C. & O. Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920					\$10,111,216
Year 1929					26,312,688
Year 1930					26,114,197

## Illinois Terminal Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$30,000	Common 6	\$462,539	\$500,000	\$435,072	87.01
1921	30,000	do	252,011	500,000	246,530	49.31
1922	30,000	do	421,190	500,000	418,846	83.77
1923	60,000	Common 12	457,567	500,000	485,080	97.02
1924	100,000	Common 20	513,622	500,000	559,947	111.99
1925	100,000	do	614,262	500,000	669,337	133.87
1926	150,000	Common 30	774,453	500,000	846,887	169.38
1927	200,000	Common 40	817,674	500,000	916,789	183.36
1928	275,988	Common 55.20	1,064,792	500,000	275,988	55.20
1929	79,496	Common 15.90	1,374,552	500,000	500,395	100.08
1930	277,611	Common 55.52	1,457,188	500,000	464,937	92.99

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$1,457,188	\$183,653	\$1,640,841	\$1,175,904	1.40
1931	1,367,977	262,187	1,630,164	1,211,918	1.34

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,615,315
Year 1929	4,863,134
Year 1930	4,871,745

## Kansas City, Mexico &amp; Orient Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$778,088	\$20,000,000	\$1,175,832	5.88
1921			254,647	20,000,000	687,977	
1922			151,224	20,000,000	625,696	
1923			50,538	20,000,000	1,571	
1924			96,517	20,000,000	1,213,269	
1925			56,572		801,447	
1926			58,558		26,633	
1927			6,610		76,937	
1928			1,279,989	15,181,064	1,386,584	9.13
1929 <sup>1</sup>			383,855	14,199,974	1,555,593	10.95

<sup>1</sup> Represents consideration received for 35,000 shares of common stock without par value.

<sup>2</sup> Report for 7 months ended July 31, 1929. Leased to the Atchison, Topeka & Santa Fe Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$906,516
Year 1929	2,899,283

## Kansas City, Mexico &amp; Orient Railway Co. of Texas

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$692,019	\$1,000,000	\$798,453	
1921			549,061	1,000,000	890,019	
1922			325,672	1,000,000	698,086	
1923			70,610	1,000,000	128,069	12.81
1924			168,719	1,000,000	195,186	
1925			32,472	1,000,000	329,160	
1926			191,129	1,000,000	169,600	
1927			246,937	1,000,000	110,733	
1928			1,899,094	1,000,000	1,533,806	153.28
1929 <sup>1</sup>			589,201	1,000,000	375,162	37.52

<sup>1</sup> Report for 7 months ended July 31, 1929. Leased to the Pan Handle & Santa Fe Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$3,789,511
Year 1929	1,785,600

## Kansas City Southern Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$840,000	Preferred 4	\$2,219,861	\$50,959,900	\$1,576,624	3.09
1921	840,000	do	3,814,192	50,959,900	2,098,038	4.12
1922	840,000	do	2,928,773	50,959,900	1,235,051	2.42
1923	840,000	do	2,682,832	50,959,900	2,074,365	4.07
1924	840,000	do	3,021,319	50,959,900	1,381,010	2.71
1925	840,000	do	3,720,748	50,959,900	1,614,439	3.17
1926	840,000	do	4,212,152	50,959,900	1,837,910	3.61
1927	840,000	do	4,177,402	50,959,900	1,712,951	3.36
1928	840,000	do	4,151,476	50,959,900	2,509,665	4.92
1929	2,338,111	do	4,165,885	50,959,900	2,767,047	5.43
1930	2,338,113	Common 5				
		Preferred 4	3,260,588	50,959,900	1,371,158	2.69
		Common 5				

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$3,260,588	\$720,883	\$3,981,471	\$2,610,313	1.53
1931 <sup>1</sup>	2,619,428	579,572	3,199,000	2,811,002	1.14

<sup>1</sup> Includes figures for Texarkana & Ft. Smith Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$7,680,933
Year 1929	19,242,743
Year 1930	18,480,135



## Texarkana &amp; Fort Smith Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$500,627	\$100,000	\$361,540	\$361.54
1921			472,983	100,000	334,968	334.97
1922			470,083	100,000	351,480	351.48
1923			854,269	100,000	699,069	699.07
1924			843,057	100,000	600,793	600.79
1925			772,678	100,000	498,859	498.86
1926			791,691	100,000	441,921	441.92
1927			590,617	100,000	204,052	204.05
1928			822,092	100,000	437,270	437.27
1929			983,037	100,000	598,172	598.17
1930			510,190	100,000	95,655	95.66

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$510,190	\$334,195	\$844,385	\$748,730	1.13
1931 <sup>1</sup>					

<sup>1</sup> Figures included in Kansas Southern Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$3,020,810
Year 1929	1,340,290
Year 1930	1,279,938

## Lehigh &amp; New England Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$388,000	Common, 6	\$903,699	\$6,800,000	\$846,750	12.45
1921	680,000	Common, 10	876,759	6,800,000	701,967	10.32
1922	680,000	do.	721,887	6,800,000	384,193	5.65
1923	204,000	Common, 3	1,252,559	6,800,000	975,895	14.35
1924	1,020,000	Common, 15	1,142,016	6,800,000	859,981	12.65
1925	680,000	Common, 10	1,034,197	6,800,000	653,647	10.05
1926	1,360,000	Common, 20	1,707,436	6,800,000	1,384,045	20.06
1927	884,000	Common, 13	1,425,133	6,800,000	1,081,182	15.90
1928	816,000	Common, 12	1,211,313	6,800,000	836,127	12.30
1929	748,000	Common, 11	1,183,176	6,800,000	802,350	11.80
1930	680,000	Common, 10	1,097,774	6,800,000	715,802	10.53

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$1,097,774	\$29,472	\$1,127,246	\$411,444	2.74
1931	924,397	29,573	953,970	445,326	2.15

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,763,981
Year 1929	2,834,864
Year 1930	2,857,066

## Midland Valley Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$745,751	\$8,005,750	\$825,650	10.31
1921			929,725	8,005,750	450,532	5.74
1922			1,100,049	8,005,750	553,463	6.91
1923	\$199,963	Preferred, 5	1,136,677	8,005,750	636,921	7.95
1924	199,963	do.	1,150,881	8,005,750	727,257	9.08
1925	400,287	Common, 5; preferred, 5	1,190,359	8,005,750	671,722	8.39
1926	860,287	Common, 16½; preferred, 5	1,297,473	8,005,750	774,919	9.68
1927	400,287	Common, 5; preferred, 5	963,071	8,005,750	447,556	5.59
1928	400,287	do.	1,023,981	8,005,750	557,616	6.97
1929	480,418	Common, 7; preferred, 5	1,052,904	8,005,750	816,880	10.20
1930	400,287	Common, 5; preferred, 5	837,307	8,005,750	594,126	7.42

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$837,307	\$232,062	\$1,070,269	\$476,143	2.25
1931	516,853	88,108	604,961	476,423	1.27

## TOTAL CORPORATE SURPLUS

Year 1920	\$265,433
Year 1929	4,989,212
Year 1930	5,142,119

Missouri-Kansas-Texas Railroad Co.<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$5,250,176	\$76,283,257	\$2,727,240	3.58
1921			6,254,809	76,283,257	1,244,067	1.63
1922			9,204,091	76,283,257	4,648,760	6.09
1923			7,535,555	112,420,000	1,796,475	1.60
1924	\$306,261	Preferred, 1½	8,912,952	112,420,000	2,322,236	2.07
1925	1,281,502	Preferred, 5	10,392,658	114,023,000	4,107,114	3.60
1926	1,615,112	Preferred, 12½	9,520,903	117,403,900	3,282,081	2.80
1927	2,111,243	(2)	9,378,298	112,672,272	4,109,866	3.65
1928	3,763,871	Preferred, 7	10,543,390	120,205,896	6,225,166	4.93
1929	4,402,894	(2)	11,551,645	131,729,616	7,921,347	6.01
1930	7,072,069	(2)	9,654,503	133,323,573	5,873,473	4.41

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$9,654,503	\$1,124,611	\$10,779,114	\$4,905,641	2.20
1931	4,989,653	584,359	5,573,912	4,913,539	1.12

<sup>1</sup> Succeeded Missouri-Kansas & Texas Ry. Co. as of Apr. 1, 1923.  
<sup>2</sup> 5½ per cent on preferred stock, with the exception of \$20,900, on which 12½ per cent was declared.  
<sup>3</sup> 7 per cent on preferred stock, with the exception of \$1,100, on which 24½ per cent was declared.  
<sup>4</sup> 7 per cent on preferred stock, and \$3 per share on 809,142 shares of common stock without par value.  
<sup>5</sup> Includes data for Missouri-Kansas-Texas R. R. Co. of Texas.

## TOTAL CORPORATE SURPLUS

Year 1920	\$16,627,003
Year 1929	14,401,537
Year 1930	11,437,753

Missouri-Kansas-Texas Railroad Co. of Texas<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$6,102,133	\$10,152,500	\$3,002,127	29.58
1921			2,041,953	10,152,500	674,229	6.64
1922			1,280,467	10,152,500	1,387,763	13.67
1923			1,256,035	1,400,000	1,117,893	79.85
1924			3,674,546	1,400,000	430,874	30.78
1925			2,452,966	1,400,000	89,448	6.39
1926			3,479,360	1,400,000	285,006	20.36
1927			2,321,675	1,400,000	897,401	64.10
1928			1,661,082	1,400,000	1,697,716	121.26
1929			1,014,447	1,400,000	2,455,020	174.64
1930			995,578	1,400,000	1,840,449	132.38

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$995,578	\$734,517	\$1,730,095	\$3,570,544	0.48
1931 <sup>1</sup>					

<sup>1</sup> Succeeded Missouri-Kansas & Texas Ry. Co. of Texas as of Apr. 1, 1923.  
<sup>2</sup> Data included is Missouri-Kansas-Texas R. R. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$30,378,641
Year 1929	6,211,738
Year 1930	8,121,352

## Monongahela Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$182,189	\$5,000,000	\$452,782	9.06
1921			676,342	5,000,000	243,125	4.86
1922			717,193	5,000,000	297,516	5.95
1923	\$300,000	Common 6	915,771	5,000,000	26,518	53
1924			962,232	5,000,000	364,058	7.28
1925	300,000	Common 6	1,756,117	5,000,000	1,150,221	23.00
1926	400,000	Common 8	1,300,083	5,000,000	1,369,579	27.39
1927	300,000	Common 6	2,240,514	5,000,000	1,353,163	27.06
1928	300,000	do	1,942,474	5,000,000	1,113,649	22.27
1929	300,000	do	2,060,214	5,000,000	1,243,916	24.88
1930	300,000	do	1,343,607	5,000,000	506,346	10.13

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$1,343,607	\$91,240	\$1,434,847	\$928,501	1.55
1931	1,263,890	64,778	1,328,668	897,229	1.48

## TOTAL CORPORATE SURPLUS

Year 1929	\$2,203,659
Year 1929	7,891,833
Year 1930	7,842,371

## New Orleans, Texas &amp; Mexico Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$297,370	Common, 3	\$221,218	\$15,000,000	\$515,122	3.43
1921	816,681	Common, 6	714,566	15,000,000	857,027	5.71
1922	889,861	do	1,344,567	15,000,000	1,180,997	7.87
1923	1,038,198	Common, 7	1,176,275	15,000,000	884,213	5.76
1924	3,485,379	Common, 23 1/2	1,368,349	15,000,000	2,104,780	14.03
1925	1,038,198	Common, 7	1,322,570	15,000,000	837,286	5.58
1926	1,038,198	do	1,038,870	15,000,000	1,388,208	9.25
1927	1,038,198	do	301,833	15,000,000	909,961	6.07
1928	1,038,198	do	921,710	15,000,000	737,346	4.92
1929	1,038,198	do	1,022,464	15,000,000	1,148,196	7.66
1930	1,038,198	do	999,644	15,000,000	845,756	5.64

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$999,644	\$2,314,894	\$3,314,538	\$2,468,782	1.34
1931 <sup>1</sup>	1,742,585	436,455	2,179,040	2,678,132	.81

<sup>1</sup> Includes New Orleans, Texas & Mexico Ry. Co.; Beaumont, Sour Lake & Western Ry. Co.; and St. Louis, Brownsville & Mexico Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,201,298
Year 1929	1,542,581
Year 1930	1,336,941

## St. Louis, Brownsville &amp; Mexico Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$703,395	\$500,000	\$790,526	158.11
1921			997,766	500,000	332,339	66.47
1922			1,142,882	500,000	386,125	77.23
1923			1,905,563	500,000	1,167,352	233.47
1924	\$654,911	Common, 131 +	2,177,108	500,000	1,336,430	267.29
1925			2,160,815	500,000	1,409,269	281.85
1926	783,988	Common, 156.80	2,362,828	500,000	1,444,742	288.95
1927	976,754	Common, 195.35	1,682,790	500,000	829,780	165.96
1928	603,112	Common, 120.62	1,994,796	500,000	1,113,771	222.75
1929	1,039,971	Common, 207.99	1,984,096	500,000	1,108,044	221.61
1930	930,898	Common, 186.18	2,508,673	500,000	1,599,187	319.84

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$2,508,673	\$53,019	\$2,561,692	\$962,505	2.66
1931					

<sup>1</sup> Included in New Orleans, Texas & Mexico Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$2,871,980
Year 1929	5,460,479
Year 1930	6,130,323

## Beaumont, Sour Lake &amp; Western Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income to capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$246,147	\$85,000	\$234,151	275.47
1921			357,676	85,000	510,457	600.54
1922			288,608	85,000	150,683	177.27
1923			362,274	85,000	288,600	304.24
1924	\$136,322	Common, 162+	410,144	85,000	159,289	187.40
1925			233,789	85,000	120,785	142.10
1926			11,879	85,000	180,738	
1927			57,189	85,000	209,488	
1928			69,818	85,000	100,377	
1929			161,346	85,000	6,027	
1930			97,436	85,000	271,603	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$97,436	\$7,929	\$105,365	\$182,046	
1931 <sup>1</sup>					

<sup>1</sup> Included in New Orleans, Texas & Mexico Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$137,247
Year 1929	354,580
Year 1930	80,859

## Orange &amp; Northwestern Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income to capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$139,386	\$35,000	\$132,195	
1921			71,700	35,000	113,444	324.13
1922			64,792	35,000	4,088	11.68
1923			6,559	35,000	29,858	
1924			10,809	35,000	45,609	
1925			40,686	35,000	67,845	
1926			2,157	35,000	87,845	
1927			16,749	35,000	77,775	
1928			42,503	35,000	106,256	
1929			11,809	35,000	76,084	
1930			77,953	35,000	140,640	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$77,953	\$1,865	\$79,818	\$64,547	
1931 <sup>1</sup>					

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$329,212
Year 1929	633,167
Year 1930	778,945

## New York Central Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income to capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$12,479,615	Common, 5	\$3,361,691	\$249,597,355	\$13,734,688	5.50
1921	12,479,641	do	56,808,738	249,597,355	22,295,686	8.93
1922	12,876,965	do	53,973,004	267,981,915	20,635,186	7.70
1923	17,432,978	Common, 6½	70,989,102	268,323,375	45,339,427	18.90
1924	20,728,835	Common, 7	64,635,074	304,836,835	39,250,400	12.88
1925	26,732,333	do	67,920,550	383,258,235	48,627,224	12.69
1926	26,827,515	do	72,158,492	383,258,235	55,664,041	14.52
1927	30,462,783	Common, 7½	61,823,827	421,285,435	58,565,145	13.90
1928	34,854,879	Common, 8	62,222,122	463,559,135	50,334,485	10.86
1929	37,090,532	do	64,624,664	463,709,235	78,277,292	16.88
1930	39,940,594	do	57,235,527	499,259,735	35,981,792	7.21

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930 <sup>1</sup>	\$37,235,527	\$39,763,106	\$96,998,633	\$61,016,842	1.59
1931	28,091,559	34,063,166	62,154,725	60,771,488	1.02

<sup>1</sup> Includes returns for Michigan Central R. R. Co., Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., Cincinnati Northern R. R. Co., Evansville, Indiana & Terre Haute Ry. Co., and Chicago, Kalamazoo & Saginaw Ry. Co., for the month of January, the properties of these companies having been leased to the New York Central R. R. Co., effective Feb. 1, 1930.

## TOTAL CORPORATE SURPLUS

Year 1920	\$30,922,887
Year 1929	288,253,205
Year 1930	290,275,411

## Pittsburgh &amp; Lake Erie Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income to capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$3,598,560	Common, 10	\$1,335,006	\$35,985,600	\$8,241,927	22.90
1921	3,598,560	do	4,066,871	35,985,600	2,384,961	6.63
1922	3,598,560	do	5,279,741	35,985,600	4,332,011	12.04
1923	3,598,560	do	15,574,595	35,985,600	13,170,109	36.60
1924	3,598,560	do	8,146,221	35,985,600	6,165,155	17.13
1925	3,598,560	do	8,891,790	35,985,600	7,369,603	20.48
1926	3,598,560	do	9,146,804	35,985,600	7,838,642	21.78
1927	7,197,120	Common, 20	8,005,294	43,182,720	6,611,809	15.31
1928	11,155,375	Common, 30	11,155,375	43,182,720	7,171,890	16.61
1929	4,318,210	Common, 10	7,770,829	43,182,720	7,553,335	17.50
1930	8,636,500	Common, 20	7,891,541	43,182,500	6,510,199	15.08

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$7,373,119	\$1,280,642	\$8,653,761	\$2,143,563	4.04
1931	3,276,312	931,454	4,207,766	1,432,511	2.94

<sup>1</sup> Includes \$7,197,120 stock dividend.

## TOTAL CORPORATE SURPLUS

Year 1920	\$33,066,407
Year 1929	50,647,547
Year 1930	47,213,550



## Michigan Central Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$749,456	Common, 4	\$2,519,244	\$18,736,400	\$3,805,785	20.31
1921	1,124,184	Common, 6	15,403,251	18,736,400	7,725,337	41.23
1922	2,623,686	Common, 14	18,066,099	18,736,400	12,818,271	68.41
1923	3,747,280	Common, 20	19,388,176	18,736,400	14,176,448	75.66
1924	3,747,280	do	18,985,283	18,736,400	13,627,534	72.73
1925	5,152,510	Common, 27½	23,763,981	18,736,400	18,806,194	101.21
1926	6,557,740	Common, 35	23,565,130	18,736,400	18,963,899	90.02
1927	16,862,760	Common, 90	20,988,826	18,736,400	16,866,558	103.49
1928	7,494,560	Common, 40	23,155,967	18,736,400	19,389,420	103.49
1929	26,230,960	Common, 140	21,898,377	18,736,400	19,335,115	103.20
1930 <sup>1</sup>						

<sup>1</sup> Leased to New York Central R. R. Co. effective Feb. 1, 1930. Operations for the month of January included in returns for the New York Central R. R. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$27,293,748
Year 1929	94,080,040
Year 1930 <sup>1</sup>	

## Cincinnati Northern Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$90,000	Common, 3	\$257,251	\$3,000,000	\$355,217	11.84
1921	150,000	Common, 5	702,255	3,000,000	562,488	18.75
1922	90,000	Common, 3	348,557	3,000,000	265,252	8.84
1923	180,000	Common, 6	838,257	3,000,000	748,950	24.97
1924	240,000	Common, 8	936,296	3,000,000	855,748	28.52
1925	300,000	Common, 10	1,042,269	3,000,000	963,996	32.13
1926	300,000	do	1,056,117	3,000,000	982,578	32.75
1927	1,500,000	Common, 50	796,818	3,000,000	732,105	24.40
1928	300,000	Common, 10	670,291	3,000,000	594,927	19.83
1929	600,000	Common, 20	883,240	3,000,000	838,316	27.94
1930 <sup>1</sup>						

<sup>1</sup> Leased to New York Central R. R. Co. effective Feb. 1, 1930. Operations for the month of January included in returns for the New York Central R. R. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,040,083
Year 1929	3,933,874
Year 1930 <sup>1</sup>	

## Cleveland, Cincinnati, Chicago &amp; St. Paul Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$499,925	Preferred, 5	\$6,853,751	\$57,027,200	\$5,888,779	10.33
1921	499,925	Preferred, 5	10,107,402	57,027,200	2,929,949	5.14
1922	2,851,360	Common, 5; preferred, 5	13,747,230	57,027,200	7,528,837	13.20
1923	2,381,073	Common, 4; preferred, 5	16,691,901	57,027,200	11,617,354	20.37
1924	2,851,360	Common, 5; preferred, 5	14,364,267	57,027,200	8,080,932	14.17
1925	3,086,503	Common, 5½; preferred, 5	18,560,709	57,027,200	11,407,526	20.00
1926	3,791,934	Common, 7; preferred, 5	18,527,246	57,027,200	11,395,284	19.98
1927	4,144,649	Common, 7¾; preferred, 5	14,603,067	57,027,200	8,775,383	15.39
1928	4,262,229	Common, 8; preferred, 5	15,622,538	57,027,300	8,819,823	15.47
1929	4,262,229	do	15,920,794	57,027,300	9,215,988	16.16
1930 <sup>1</sup>						

<sup>1</sup> Leased to New York Central R. R. Co., effective Feb. 1, 1930. Operations for the month of January included in returns for the New York Central R. R. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$17,726,759
Year 1929	66,901,040
Year 1930 <sup>1</sup>	

Evansville, Indianapolis & Terre Haute Railway Co.<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$5,716	\$4,290,000	\$61,052	
1921			403,728	4,290,000	512,859	
1922			313,875	4,290,000	508,673	
1923			16,285	4,290,000	205,228	
1924			172,297	4,290,000	95,237	
1925			437,761	4,290,000	160,480	3.74
1926			386,420	4,290,000	324,291	7.56
1927			234,537	4,290,000	178,100	4.15
1928			465	4,290,000	68,187	
1929			155,741	4,290,000	79,363	1.85
1930 <sup>1</sup>						

<sup>1</sup> Includes returns of Evansville & Indianapolis R. R. Co. for period ended June 15, 1920, and of Evansville, Indianapolis & Terre Haute Ry. Co. for period subsequent thereto.

<sup>2</sup> Leased to New York Central R. R. Co., effective Feb. 1, 1930. Operations for the month of January included in returns for the New York Central R. R. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$78,563
Year 1929	806,903
Year 1930 <sup>2</sup>	

## New York, Chicago &amp; St. Louis Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income o capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$1,774,360	First preferred, 5; second preferred, 7½; common, 5.	\$3,646,879	\$29,967,300	\$2,248,851	7.50
1921.....	3,273,725	First preferred, 10; second preferred, 12½; common 10.	4,428,097	29,967,300	4,322,705	14.42
1922.....	1,499,365	First preferred, 5; second preferred, 5; common, 5.	6,601,148	29,967,300	4,119,994	13.74
1923.....	4,354,759	(1) Preferred, 6; common, 6.	9,198,854	55,931,490	6,331,342	11.32
1924.....	3,361,775	Preferred, 6; common, 6.	9,589,636	56,105,445	5,869,247	10.46
1925.....	3,367,739	do.	10,592,407	56,159,065	6,445,807	11.48
1926.....	4,887,239	Preferred, 6; common, 11.	10,157,801	63,038,675	8,066,308	12.80
1927.....	21,208,519	Preferred, 6; common, 63.32.	9,995,984	63,042,710	6,639,477	10.53
1928.....	4,084,045	Preferred, 6; common, 6.	9,556,897	69,747,810	6,378,710	9.15
1929.....	4,185,294	do.	10,471,999	69,762,290	7,390,043	10.59
1930.....	4,185,628	do.	5,648,754	69,764,160	4,396,744	6.30

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$5,648,754	\$6,675,247	\$12,324,001	\$7,927,257	1.55
1931.....	2,542,098	5,181,222	7,723,320	7,843,500	.98

<sup>1</sup> Represents dividends at rate of 6 per cent on preferred and common stock of present company; also 4 per cent on preferred and common stock of Toledo, St. Louis & Western R. R. and 5 per cent on first preferred stock of New York, Chicago & St. Louis R. R. Co., predecessor companies.  
<sup>2</sup> Includes \$16,667,680 paid in stock of the Chesapeake Corporation in the ratio of 1.7 shares of that company's no par stock for each share of respondent's stock.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$11,018,696
Year 1929.....	47,728,586
Year 1930.....	34,302,081

## New York, New Haven &amp; Hartford Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income o capita stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$12,575,136	\$157,117,900	\$4,972,558	
1921.....			740,034	157,117,900	14,121,623	
1922.....			12,074,160	157,117,900	4,865,768	
1923.....			13,271,728	157,117,900	2,917,106	
1924.....			19,787,279	157,117,900	2,998,650	1.91
1925.....			23,324,795	157,117,900	7,418,252	4.72
1926.....			23,204,053	157,117,900	8,243,112	5.26
1927.....	\$821,869	Preferred, 1.75.	25,235,284	204,715,960	10,432,661	5.10
1928.....	8,056,796	Preferred, 7; common, 3.	29,238,404	205,930,510	16,887,909	8.20
1929.....	10,880,220	Preferred, 7; common, 4.75.	33,631,144	206,154,600	22,296,268	10.82
1930.....	12,859,677	Preferred, 7; common, 6.	25,084,940	206,155,300	15,863,791	7.70

## New York, New Haven, &amp; Hartford Railroad Co.—Continued

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$25,084,940	\$9,190,712	\$34,275,652	\$18,411,861	1.86
1931 <sup>1</sup> .....	18,657,675	8,972,445	27,630,120	18,450,251	1.50

<sup>1</sup> Figures taken from preliminary report of capitalization and income.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$31,494,348
Year 1929.....	24,974,201
Year 1930.....	24,736,244

## New York, Ontario &amp; Western Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate per cent				
Dec. 31—						
1920.....	\$581,283	Preferred, 6; common, 1.	\$35,666	\$58,117,983	\$730,939	1.26
1921.....	1,162,356	Preferred, 6; common, 2.	1,297,074	58,117,983	636,460	1.10
1922.....	210	Preferred, 6.	334,216	58,117,983	879,059	
1923.....	210	do.	1,006,955	58,117,983	122,785	.21
1924.....	581,195	Preferred, 6; common, 1.	1,675,368	58,117,983	627,500	1.08
1925.....	192	Preferred, 6.	1,091,461	58,117,983	41,067	.07
1926.....	581,195	Preferred, 6; common, 1.	1,508,130	58,117,983	775,128	1.33
1927.....	192	Preferred, 6.	1,006,137	58,117,983	5,631	.01
1928.....	192	do.	913,577	58,117,983	159,669	
1929.....			851,365	58,117,983	260,045	
1930.....			883,267	58,117,983	260,460	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$883,267	\$391,690	\$1,274,957	\$1,535,417	0.83
1931 <sup>1</sup> .....	1,769,353	448,504	2,217,857	1,548,614	1.43

<sup>1</sup> Figures taken from preliminary report of capitalization and income.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$7,773,301
Year 1929.....	7,020,945
Year 1930.....	6,626,375

## Norfolk &amp; Western Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate per cent				
Dec. 31—1920.....	\$9,423,681	Common, 7; preferred, 4.	\$3,655,717	\$144,473,400	\$12,496,788	8.65
1921.....	9,425,882	do.	14,862,309	144,512,000	10,043,181	6.95
1922.....	10,880,471	Common, 8; preferred, 4.	18,628,146	150,819,200	14,554,989	9.65
1923.....	11,247,309	do.	19,877,677	151,986,600	18,788,497	12.36
1924.....	11,528,231	do.	22,468,429	157,786,600	14,646,812	9.28
1925.....	11,850,386	do.	31,510,952	160,311,600	26,564,846	16.57
1926.....	14,840,410	Common, 10; preferred, 4.	40,922,151	162,562,600	36,867,506	22.68
1927.....	14,910,459	do.	34,010,951	162,968,600	30,749,616	18.86
1928.....	14,940,062	do.	34,204,058	163,290,600	30,830,034	18.88
1929.....	17,794,228	Common, 12; preferred, 4.	44,208,196	163,640,600	41,906,502	25.61
1930.....	17,797,488	Preferred, 4. (Common, 12.)	33,640,859	163,640,600	31,997,481	19.55

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$33,640,859	\$3,578,032	\$37,218,891	\$5,221,410	7.13
1931.....	22,977,506	2,768,440	25,745,946	4,564,654	5.64

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$75,757,773
Year 1929.....	186,920,103
Year 1930.....	202,140,584

## Pere Marquette Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920.....	\$560,000	Prior 5 preferred.....	\$266,848	\$68,675,000	\$1,385,018	2.02
1921.....	1,802,900	(1).....	5,674,566	68,675,000	3,765,524	5.48
1922.....	1,450,745	(2).....	6,081,196	68,675,000	4,350,560	6.33
1923.....	2,781,410	Common 3 <sup>1</sup> .....	7,066,372	68,675,000	5,202,810	7.88
1924.....	2,983,290	Common 4 <sup>2</sup> .....	7,200,828	68,675,000	4,935,022	7.19
1925.....	2,983,290	Common 4 <sup>3</sup> .....	8,770,220	68,675,000	6,440,382	9.38
1926.....	4,785,130	Common 8 <sup>4</sup> .....	9,793,224	68,675,000	7,702,004	11.22
1927.....	4,785,130	Common 8 <sup>4</sup> .....	9,291,698	68,675,000	7,176,924	10.45
1928.....	4,785,130	Common 8 <sup>4</sup> .....	10,596,357	68,675,000	8,466,971	12.33
1929.....	4,785,130	Common 8 <sup>4</sup> .....	9,273,417	68,675,000	7,473,279	10.88
1930.....	4,785,130	Common 8 <sup>4</sup> .....	4,541,164	68,675,000	2,015,015	2.93

- <sup>1</sup> Preferred 10 per cent; prior preference, 5 per cent.  
<sup>2</sup> Preferred, 7½ per cent; prior preference, 5 per cent.  
<sup>3</sup> Preferred, 5 per cent; prior preference, 5 per cent.  
<sup>4</sup> Preferred, 5 per cent; prior preference, 5 per cent.

## Pere Marquette Railway Co.—Continued

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$4,541,164	\$560,752	\$5,101,916	\$3,086,901	1.65
1931.....	1,284,565	556,827	1,841,392	3,747,251	.49

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$4,825,297
Year 1929.....	29,980,020
Year 1930.....	17,367,052

Reading Co.<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920.....	\$6,372,255	Common 15.....	\$1,504,825	\$42,481,700	\$11,165,622	26.28
1921.....	5,735,080	Common 13½.....	10,645,735	42,481,700	4,336,452	10.21
1922.....	6,372,255	Common 15.....	14,328,714	42,481,700	7,896,552	18.59
1923.....	8,496,340	Common 20.....	21,813,109	42,481,700	16,908,865	39.80
1924.....	8,397,807	Common, 8 first preferred, 4; second preferred, 4.	18,967,741	139,950,950	15,121,316	10.80
1925.....	8,397,602	do.	20,354,629	139,950,950	17,159,619	12.26
1926.....	9,797,384	Common, 10; first preferred, 4; second preferred, 4.	22,032,863	139,950,950	18,531,122	13.24
1927.....	8,397,602	Common, 8; first preferred, 4; second preferred, 4.	16,790,121	139,950,950	13,504,154	9.65
1928.....	8,397,602	do.	17,098,849	139,950,950	15,090,690	10.78
1929.....	8,397,602	do.	17,196,521	139,950,950	15,508,741	11.08
1930.....	8,397,602	do.	12,644,507	139,950,950	8,462,627	6.05

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$12,644,507	\$4,921,498	\$17,566,005	\$9,103,378	1.93
1931.....	8,994,703	4,084,994	13,079,697	9,546,046	1.37

<sup>1</sup> Represents returns for Philadelphia & Reading Ry. Co. to Dec. 31, 1923, and its successor, the Reading Co., subsequent thereto.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$63,706,652
Year 1929.....	114,102,767
Year 1930.....	112,325,626



## Atlantic City Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$42,504	\$3,620,100	\$185,250	
1921			64,397	3,620,100	267,490	
1922			182,077	3,620,100	452,488	
1923			180,901	3,620,100	371,487	
1924			167,100	3,620,100	371,271	
1925			222,465	3,620,100	185,252	
1926			114,607	3,620,100	241,490	
1927			441,480	3,620,100	771,512	
1928			721,387	3,620,100	1,080,834	
1929			190,242	3,620,100	286,086	
1930			845,601	3,620,100	259,908	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$845,601		\$39,944	\$805,657	\$154,251
1931	697,823		41,812	596,011	147,114

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,868,803
Year 1929	6,496,084
Year 1930	6,463,912

## Central Railroad Co. of New Jersey

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$2,743,680	Common, 10	\$3,667,906	\$27,436,800	\$2,817,670	
1921	3,841,152	Common, 14	5,998,782	27,436,800	21,355,232	77.83
1922	3,292,416	Common, 12	3,375,154	27,436,800	2,614	.01
1923	3,292,416	do	4,583,236	27,436,800	625,412	2.28
1924	3,292,416	do	10,273,250	27,436,800	6,187,840	22.55
1925	3,292,416	do	7,753,462	27,436,800	3,596,118	13.11
1926	3,292,416	do	8,051,535	27,436,800	4,328,760	15.92
1927	3,292,416	do	10,383,653	27,436,800	5,472,604	19.95
1928	3,292,416	do	9,385,057	27,436,800	6,051,710	22.06
1929	3,292,416	do	9,367,044	27,436,800	5,042,754	18.38
1930	3,292,416	do	7,152,607	27,436,800	2,833,852	10.33

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$7,152,607	\$1,582,060	\$8,734,667	\$5,900,815	1.48
1931	4,224,783	1,505,028	5,729,811	5,814,643	.99

<sup>1</sup> In 1921, an unusual dividend of \$19,780,302 was received on stock of the Lehigh & Wilkes Barre Coal Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$44,265,603
Year 1929	94,160,206
Year 1930	93,062,902

## Richmond, Fredericksburg &amp; Potomac Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$692,731	Common, 9 <sup>1</sup>	\$1,811,623	\$9,417,400	\$1,034,740	10.99
1921	692,731	do <sup>1</sup>	1,275,456	9,417,400	985,489	10.46
1922	692,731	do <sup>1</sup>	2,543,648	9,417,400	2,094,911	22.25
1923	1,386,065	Common, 7 <sup>1</sup>	2,811,335	14,834,800	2,297,035	15.48
1924	963,601	do <sup>1</sup>	2,627,875	14,834,800	2,405,819	16.22
1925	1,505,341	Common, 12 <sup>1</sup>	3,277,685	14,834,800	2,899,821	19.55
1926	1,505,341	do <sup>1</sup>	2,662,956	14,834,800	2,473,338	16.67
1927	1,015,273	Common, 7 <sup>1</sup>	1,875,947	14,834,800	1,709,754	11.53
1928	1,071,949	Common, 8 <sup>1</sup>	2,011,873	14,834,800	1,840,233	12.40
1929	1,505,341	Common, 12 <sup>1</sup>	2,434,944	14,834,800	2,256,973	15.21
1930	1,071,949	Common, 8 <sup>1</sup>	1,307,836	14,834,800	1,125,681	7.59

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$1,307,836	\$172,153	\$1,479,989	\$354,308	4.18
1931	1,167,742	158,595	1,326,337	410,496	3.23

<sup>1</sup> Dividend obligations, 9 per cent; nonvoting, 6 per cent; debenture, 2 per cent on \$481,100 and 3 per cent on \$19,300.

<sup>2</sup> Includes \$5,417,400 stock dividend.

<sup>3</sup> Dividend obligations, 107 per cent; nonvoting, 6 per cent; debenture, 1 per cent on \$481,100 and 2 per cent on \$19,300.

<sup>4</sup> Dividend obligations, 7 per cent; nonvoting, 6 per cent; debenture, 1 per cent on \$19,300.

<sup>5</sup> Dividend obligations, 12 per cent; nonvoting, 6 per cent; debenture, 6 per cent on \$19,300 and 5 per cent on \$481,100.

<sup>6</sup> Dividend obligations, 7½ per cent; nonvoting, 6 per cent; debenture, 1 per cent on \$19,300.

<sup>7</sup> Dividend obligations, 8 per cent; nonvoting, 8 per cent; debenture, 2 per cent on \$19,300 and 1 per cent on \$481,100.

## TOTAL CORPORATE SURPLUS

Year 1920	\$6,231,735
Year 1929	10,489,152
Year 1930	10,638,946

## St. Louis-San Francisco Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$5,382,091	\$57,947,026	\$3,162,865	5.46
1921			17,858,445	57,947,026	3,085,931	5.33
1922			15,490,000	57,947,026	1,269,475	2.19
1923			18,484,459	57,947,026	2,693,314	4.65
1924	\$104,628	Preferred, 1½	20,589,138	57,947,026	4,941,353	8.53
1925	2,907,652	Preferred, 6; common, 5½	21,867,133	57,947,026	5,720,321	9.87
1926	4,730,366	Preferred, 6; common, 8½	2,040,058	57,947,026	5,813,696	10.04
1927	3,898,513	Preferred, 6; common, 6	22,045,124	73,043,226	6,165,381	8.4
1928	6,246,110	Preferred; common, 8	20,660,188	114,758,751	10,153,399	16.69
1929	7,692,062	Preferred, 5; common, 8	20,856,637	114,702,326	10,245,494	8.93
1930	8,184,068	Preferred, 6; common, 8	16,702,185	114,701,526	6,732,937	5.87

<sup>1</sup> 3½ per cent on preferred stock called for redemption on June 1, 1928; 3 per cent on new stock issued.

## St. Louis-San Francisco Railway Co.—Continued

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$16,702,185	\$2,954,884	\$19,657,069	\$12,924,132	1.52
1931 <sup>1</sup> .....	9,258,941	812,201	10,071,142	13,447,467	.75

<sup>1</sup> Includes St. Louis-San Francisco Ry. Co., St. Louis, San Francisco & Texas Ry. Co., and Fort Worth & Rio Grande Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$6,853,825
Year 1929.....	28,060,560
Year 1930.....	23,917,778

## St. Louis, San Francisco &amp; Texas Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$1,032,728	\$804,000	\$563,189	-----
1921.....			225,424	804,000	279,487	-----
1922.....			8,504	804,000	46,221	-----
1923.....			36,799	804,000	14,013	-----
1924.....			221,809	804,000	167,533	20.84
1925.....			296,988	804,000	242,473	30.16
1926.....			174,627	804,000	118,314	14.72
1927.....			41,551	804,000	14,697	-----
1928.....			104,631	975,000	38,412	3.94
1929.....			125,400	975,000	54,362	5.58
1930.....			43,476	975,000	68,371	-----

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$43,476	\$17,830	\$61,306	\$126,677	0.48
1931 <sup>1</sup> .....					

<sup>1</sup> Included in St. Louis-San Francisco Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$1,683,610
Year 1929.....	1,495,196
Year 1930.....	1,870,340

## Fort Worth &amp; Rio Grande Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$1,279,564	\$2,928,300	\$641,213	-----
1921.....			150,772	2,928,300	317,126	-----
1922.....			249,977	2,928,300	422,033	-----
1923.....			41,873	2,928,300	216,538	-----
1924.....			13,483	2,928,300	161,620	-----
1925.....			118,632	2,928,300	222,123	-----
1926.....			228,494	2,928,300	404,861	-----
1927.....			167,770	2,928,300	343,514	-----
1928.....			18,855	2,928,300	101,993	-----
1929.....			181,084	2,928,300	177,319	-----
1930.....			294,654	2,928,300	281,786	-----

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$294,654	\$13,873	\$280,781	\$1,005	-----
1931 <sup>1</sup> .....					

<sup>1</sup> Included in St. Louis-San Francisco Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$1,584,520
Year 1929.....	4,593,308
Year 1930.....	4,881,215

## St. Louis Southwestern Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$6,625,622	\$36,240,750	\$4,942,787	13.64
1921.....			5,566,684	36,240,750	3,941,055	10.87
1922.....	\$497,341	Preferred 2½	5,666,588	36,240,750	4,079,720	11.25
1923.....	994,683	Preferred 5	6,111,138	36,240,750	4,485,795	12.37
1924.....	994,682	do.....	4,160,359	36,240,750	2,374,835	6.55
1925.....	994,683	do.....	4,176,561	36,240,750	2,328,361	6.42
1926.....	994,683	do.....	4,375,007	36,240,750	2,492,581	6.88
1927.....	994,683	do.....	3,611,631	36,240,750	1,896,804	5.23
1928.....	994,683	do.....	4,230,282	36,240,750	2,498,121	6.89
1929.....	994,682	do.....	4,741,480	36,999,700	2,889,139	7.81
1930.....	746,010	Preferred 3½	2,350,507	37,079,700	284,278	.77

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$2,350,507	\$314,719	\$2,665,226	\$2,380,948	1.12
1931.....	2,607,346	136,272	2,743,618	2,999,177	1.91

<sup>1</sup> Includes data for St. Louis Southwestern Ry. Co. of Texas.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$18,236,231
Year 1929.....	23,696,360
Year 1930.....	22,986,890

## St. Louis Southwestern Railway Co. of Texas

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$2,085,191	\$2,750,000	\$1,982,950	
1921			807,925	2,750,000	1,447,573	
1922			1,279,762	2,750,000	1,836,873	
1923			546,557	2,750,000	1,101,841	
1924			526,011	2,750,000	10,166	
1925			592,530	2,750,000	50,931	1.85
1926			467,245	2,750,000	87,011	
1927			502,836	2,750,000	48,960	
1928			186,864	2,750,000	738,759	
1929			1,855,074	2,750,000	1,784,296	
1930			182,889	2,750,000	789,760	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931	\$182,889 (1)	\$51,442 (1)	\$151,447 (1)	\$598,313 (1)	(1)

<sup>1</sup> Included in St. Louis Southwestern Ry. Co.

## TOTAL CORPORATE SURPLUS

Year 1920	\$3,053,169
Year 1929	5,086,363
Year 1930	4,294,830

## Seaboard Air Line Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$3,161,488	\$60,950,800	\$27,603	0.05
1921			2,062,372	60,950,800	224,207	
1922			4,230,569	60,950,800	1,153,290	
1923			7,957,963	60,950,500	1,394,441	2.29
1924			9,013,514	60,950,500	1,828,985	3.00
1925			10,822,731	60,950,500	2,585,035	4.24
1926			12,014,178	60,950,500	3,178,811	5.22
1927			10,388,760	60,950,500	81,590	.05
1928			10,055,417	60,950,500	1,180,298	1.94
1929			10,965,725	60,950,500	1,011,678	1.66
1930			5,817,039	85,110,662	4,698,680	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931	\$5,817,039 2,578,649	\$990,162 401,633	\$6,816,201 2,980,282	\$11,414,821 10,055,533	0.60 .30

## TOTAL CORPORATE SURPLUS

Year 1920	\$6,062,909
Year 1929	9,378,077
Year 1930	3,593,943

## Southern Pacific Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$18,209,281	Common, 6	\$21,580,710	\$326,441,406	\$25,364,205	7.77
1921	20,639,190	do.	33,686,561	344,380,906	27,526,527	7.99
1922	20,662,854	do.	40,559,557	344,380,906	24,907,730	7.23
1923	20,662,854	do.	47,147,343	344,380,906	24,142,462	7.01
1924	20,942,854	do.	38,497,712	372,380,906	25,372,149	6.81
1925	22,342,854	do.	40,946,019	372,380,906	31,141,504	8.36
1926	22,342,854	do.	48,128,842	372,380,906	31,125,227	8.36
1927	22,342,854	do.	45,302,629	372,380,906	29,296,667	7.87
1928	22,342,854	do.	46,020,457	372,380,906	31,932,666	8.58
1929	22,342,871	do.	48,024,003	372,381,806	34,374,931	9.23
1930	22,342,908	do.	34,673,671	372,381,806	38,530,887	10.29

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931	\$34,673,671 18,946,079	\$41,438,470 20,554,940	\$76,112,141 39,500,919	\$37,781,254 26,604,160	2.01 1.49

## TOTAL CORPORATE SURPLUS

Year 1920	\$168,156,833
Year 1929	254,089,106
Year 1930	299,563,906

## Northwestern Pacific Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$986,124	\$35,000,000	\$280,197	
1921			1,608,331	35,000,000	204,156	0.58
1922			1,563,167	35,000,000	173,853	.50
1923			1,378,793	35,000,000	10,808	
1924			1,284,373	35,000,000	113,644	
1925			1,188,222	35,000,000	243,885	
1926			1,229,246	35,000,000	172,739	
1927			618,599	35,000,000	791,857	
1928			50,483	35,000,000	1,330,904	
1929			299,726	35,000,000	1,098,987	
1930			52,045	35,000,000	1,455,389	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931	\$52,045 341,963	\$39,874 39,365	\$12,171 302,598	\$1,443,218 1,446,095	

## TOTAL CORPORATE SURPLUS

Year 1920	\$3,643,371
Year 1929	634,887
Year 1930	2,238,067



## Texas &amp; New Orleans Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$1,821,661	\$5,000,000	\$749,110	
1921.....			690,626	5,000,000	1,107,729	
1922.....			91,064	5,000,000	1,111,189	
1923.....			578,279	5,000,000	8,722,590	
1924.....			368,924	5,000,000	811,839	
1925.....			1,765,903	5,000,000	1,352,490	27.05
1926.....			950,360	5,000,000	778,181	15.56
1927.....			6,120,148	5,000,000	653,267	13.07
1928.....			8,375,035	5,000,000	1,948,119	38.96
1929.....			11,696,691	5,000,000	4,908,363	98.17
1930.....			8,425,476	5,000,000	1,687,836	33.76

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$8,425,476	\$488,579	\$8,914,055	\$7,226,219	1.23
1931.....	3,018,288	456,598	3,474,886	7,109,833	.49

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$6,294,613
Year 1929.....	10,538,471
Year 1930.....	12,320,832

## Southern Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	1,726,008	Preferred, 2½; stock transfer certificates, 4.	\$13,870,113	\$185,650,200	\$1,603,921	0.86
1921.....	226,008	Stock transfer certificates, 4.	13,971,782	185,650,200	2,298,229	1.24
1922.....	1,726,008	Preferred, 2½; stock transfer certificates, 4.	20,472,778	185,650,200	9,086,258	4.89
1923.....	3,226,008	Preferred, 5; stock transfer certificates, 4.	28,128,137	185,650,200	15,399,212	8.29
1924.....	9,976,008	Preferred, 6½; common, 5, stock transfer certificates, 4.	30,442,720	185,650,200	18,033,659	9.71
1925.....	9,826,008	Preferred, 5; common, 5, stock transfer certificates, 4.	35,086,021	185,650,200	22,844,552	12.31
1926.....	11,626,008	Preferred, 5; common, 7, stock transfer certificates, 4.	35,528,783	194,788,500	23,882,749	12.26
1927.....	12,629,814	Preferred, 5; common, 7½, stock transfer certificates, 4.	32,765,062	195,468,760	22,026,556	11.27
1928.....	13,611,608	Preferred, 5; common, 8, stock transfer certificates, 4.	30,842,554	195,470,200	19,603,205	10.03
1929.....	13,611,608	Preferred, 5; common, 8, stock transfer certificates, 4.	30,030,977	195,470,200	18,459,853	9.44
1930.....	18,350,038	Preferred, 5; common, 11.65, stock transfer certificates, 4.	19,708,163	195,470,200	9,447,465	4.83

<sup>1</sup> In addition \$1,500,000 representing 2½ per cent on preferred stock was declared from a reserve created by a charge to income in a previous year.

<sup>2</sup> Excludes \$2,250,000 credited to "Appropriated surplus not specifically invested," as a reserve for future dividends.

<sup>3</sup> Includes \$2,250,000 credited to "Appropriated surplus not specifically invested," as a reserve for future dividends.

## Southern Railway Co.—Continued

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$19,708,163	\$7,544,013	\$27,252,176	\$17,804,680	1.53
1931.....	8,281,106	3,200,597	11,481,703	17,411,185	.66

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$48,649,902
Year 1929.....	119,755,400
Year 1930.....	109,373,546

## Alabama Great Southern Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$784,725	Common, 7; Preferred, 7.	\$2,061,072	\$11,210,350	\$1,504,385	13.42
1921.....	728,673	Common, 6½; Preferred, 6½.	1,020,834	11,210,350	535,090	4.77
1922.....	784,725	Common, 7; Preferred, 7.	1,483,909	11,210,350	1,082,430	9.66
1923.....	784,725	do.	2,469,543	11,210,350	2,030,437	18.11
1924.....	840,776	Common, 7½; Preferred, 7½.	2,487,078	11,210,350	2,163,256	19.30
1925.....	784,725	Common, 7; Preferred, 7.	2,999,281	11,210,350	2,998,348	26.75
1926.....	1,457,346	Common, 13; Preferred, 13.	2,728,463	11,210,350	2,772,462	24.73
1927.....	1,457,345	do.	2,607,308	11,210,350	2,621,764	23.39
1928.....	1,569,449	Common, 14; Preferred, 14.	2,538,423	11,210,350	2,566,343	22.89
1929.....	1,569,449	do.	2,468,709	11,210,350	2,520,861	22.49
1930.....	2,914,691	Common, 26; Preferred, 26.	1,327,268	11,210,350	2,693,446	24.03

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$1,327,268	\$1,894,583	\$3,221,851	\$528,405	6.10
1931.....	355,769	478,860	834,629	539,942	1.55

Year 1920 total corporate surplus.....	\$6,573,797
Year 1929 total corporate surplus.....	15,570,297
Year 1930 total corporate surplus.....	15,318,576

## Cincinnati, New Orleans &amp; Texas Pacific Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920	\$511,370	Common, 13; Preferred, 5	\$3,879,973	\$5,443,400	\$2,502,839	45.98
1921	481,470	Common, 12; Preferred, 5	1,942,444	5,443,400	703,535	12.92
1922	511,370	Common, 13; Preferred, 5	1,910,018	5,443,400	636,569	11.69
1923	511,370	do.	4,856,706	5,443,400	3,632,663	66.74
1924	511,370	do.	5,574,443	5,443,400	4,315,173	79.27
1925	511,370	do.	7,328,954	5,443,400	6,512,015	119.63
1926	1,089,370	Common, 21; Preferred, 5	5,707,689	11,423,400	4,759,303	41.66
1927	1,109,370	Common, 11; Preferred, 5	4,709,507	11,423,400	3,815,344	33.40
1928	1,109,370	do.	4,917,528	11,423,400	3,732,740	32.68
1929	1,109,370	do.	3,995,685	11,423,400	3,050,681	26.78
1930	5,325,270	Common, 58; Preferred, 5	3,620,613	11,423,400	2,724,934	23.85

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$3,620,613	\$916,571	\$4,537,184	\$1,812,250	2.50
1931	2,046,108	367,351	2,413,459	1,822,205	1.32

<sup>1</sup> Includes \$5,980,000 stock dividend.

Year 1920 total corporate surplus	\$23,645,686
Year 1929 total corporate surplus	41,926,193
Year 1930 total corporate surplus	39,271,660

## Georgia Southern &amp; Florida Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920	\$44,200	First preferred, 2½; Second preferred, 2½	\$187,923	\$3,768,000	\$371,679	—
1921			173,504	3,768,000	476,784	—
1922			394,539	3,768,000	118,078	3.13
1923	44,200	First preferred, 2½; Second preferred, 2½	633,021	3,768,000	391,684	10.40
1924	88,400	First preferred, 5; Second preferred, 5	860,916	3,768,000	581,192	15.42
1925	88,400	First preferred, 5; Second preferred, 5	1,398,391	3,768,000	1,003,780	26.64
1926	188,400	First preferred, 5; Second preferred, 5; Common, 5	953,254	3,768,000	653,317	17.34
1927	88,400	First preferred, 5; Second preferred, 5	420,254	3,768,000	98,336	2.61
1928	88,400	First preferred, 5; Second preferred, 5	435,950	3,768,000	113,365	3.01
1929	88,400	First preferred, 5; Second preferred, 5	427,624	3,768,000	103,726	2.75
1930	61,300	First preferred, 5; Second preferred, 2½	373,567	3,768,000	65,947	1.75

<sup>1</sup> In addition \$44,200 was paid, representing 2½ per cent on first preferred and 2½ per cent on second preferred stock charged to a surplus created in 1919.

## Georgia Southern &amp; Florida Railway Co.—Continued

Year	Net railway operating income	Other income (accounts 509-519 inclusive plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930	\$373,567	\$31,510	\$405,077	\$339,130	1.19
1931	201,111	13,426	214,537	338,110	.63

Year 1920, total corporate surplus	\$1,848,606
Year 1929, total corporate surplus	3,296,525
Year 1930, total corporate surplus	3,295,362

## Mobile &amp; Ohio Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—1920	\$240,672	Common, 4	\$1,049,539	\$6,016,800	\$1,055,975	—
1921	240,672	do.	1,174,974	6,016,800	201,706	3.35
1922	240,672	do.	2,713,282	6,016,800	1,018,962	16.94
1923	421,176	Common, 7	2,695,009	6,016,800	1,127,968	18.75
1924	421,176	do.	3,532,156	6,016,800	2,081,070	34.59
1925	601,680	Common, 10	3,642,919	6,016,800	2,187,623	36.36
1926	601,680	do.	3,404,786	6,016,800	1,886,339	31.35
1927	722,016	Common, 12	2,931,071	6,016,800	1,349,667	22.43
1928	722,016	do.	2,647,695	6,016,800	1,082,426	17.99
1929	722,016	do.	2,460,151	6,016,800	903,131	15.01
1930	722,016	do.	653,326	6,016,800	930,554	—

Year	Net railway operating income	Other income (accounts 509-519 inclusive plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930	\$653,326	\$139,543	\$792,869	\$1,723,423	0.46
1931	318,555	101,064	419,619	1,642,969	—

## TOTAL CORPORATE SURPLUS

Year 1920	\$3,300,095
Year 1929	13,832,528
Year 1930	12,032,617

## New Orleans &amp; Northeastern Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$360,000	Common, 6	\$561,663	\$6,000,000	\$813,288	13.55
1921	360,000	do	269,593	6,000,000	306,878	
1922	360,000	do	32,260	6,000,000	66,344	1.11
1923	360,000	do	874,101	6,000,000	632,645	10.54
1924	360,000	do	1,186,211	6,000,000	880,362	14.67
1925	540,000	Common, 9	1,465,491	6,000,000	1,206,230	20.10
1926	540,000	do	1,399,250	6,000,000	1,189,634	19.83
1927	540,000	do	978,798	6,000,000	761,204	12.69
1928	540,000	do	852,117	6,000,000	603,150	10.05
1929	540,000	do	881,245	6,000,000	662,112	11.04
1930	900,000	Common, 15	274,574	6,000,000	17,498	.29

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$274,574	\$138,562	\$413,136	\$395,638	1.04
1931	349,167	88,202	437,369	395,902	

## TOTAL CORPORATE SURPLUS

Total, 1920	\$5,104,361
Total, 1929	7,094,169
Total, 1930	6,128,208

## Northern Alabama Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 13—						
1920			\$12,776	\$1,943,300	\$12,863	
1921			1,263	1,943,300	107,448	
1922			203,415	1,943,300	14,078	0.72
1923			308,171	1,943,300	207,399	10.67
1924			231,100	1,943,300	126,646	6.52
1925			201,273	1,943,300	193,336	9.95
1926			240,362	1,943,300	145,526	7.50
1927			198,706	1,943,300	106,840	5.50
1928			56,145	1,943,300	55,700	
1929			213,269	1,943,300	105,825	5.45
1930			69,769	1,943,300	32,860	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$69,769	\$7,710	\$77,479	\$110,339	0.70
1931	61,551	4,287	65,838	110,043	

## TOTAL CORPORATE SURPLUS

Year, 1920	\$305,898
Year, 1929	946,433
Year, 1930	913,414

## Terminal Railroad Association of St. Louis

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$1,376,838	\$3,087,800	\$198,727	6.44
1921			1,991,743	3,087,800	570,515	
1922			2,146,789	3,087,800	65,558	2.12
1923			2,147,706	3,087,800	173,585	5.62
1924			1,872,046	3,087,800	75,407	
1925			2,005,122	3,087,800	75,147	2.43
1926			4,439,635	3,087,800	1,450,755	46.98
1927			3,944,360	3,087,800	885,044	28.66
1928			3,710,658	3,087,800	644,892	20.89
1929			3,363,026	3,293,600	440,749	13.38
1930			2,286,149	3,293,600	582,035	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$2,286,149	\$1,002,822	\$3,288,971	\$3,871,006	0.85
1931	1,800,340	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$7,627,589
Year 1929	11,707,978
Year 1930	10,763,277

## Texas &amp; Pacific Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$610,467	\$38,755,110	\$2,951,915	7.62
1921			2,832,148	38,755,110	1,027,183	2.65
1922			3,629,473	38,755,110	815,626	2.10
1923			5,237,535	38,755,110	3,433,111	8.86
1924	707,798	Preferred 5	5,801,611	62,458,110	3,878,591	6.21
1925	1,185,150	do	5,974,105	62,458,110	3,821,555	6.12
1926	1,185,150	do	6,240,676	62,458,110	3,927,341	6.29
1927	1,185,150	do	6,497,569	62,458,110	4,113,981	6.59
1928	2,638,298	(Common 3 3/4) Preferred 5	10,446,475	62,458,110	7,993,956	12.80
1929	3,122,845	(Common 5) Preferred 5	8,778,383	62,458,110	6,130,074	9.81
1930	3,122,900	(Common 5) Preferred 5	7,235,687	62,458,110	3,652,191	5.85

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$7,235,687	\$507,048	\$7,742,735	\$4,090,544	1.89
1931	5,870,317	525,942	6,396,259	4,354,401	1.47

<sup>1</sup> Represents returns from preliminary report of capitalization and income.

## TOTAL CORPORATE SURPLUS

Year 1920	\$24,724,232
Year 1929	49,196,181
Year 1930	49,579,276



## RAILROAD LEGISLATION

Toledo, St. Louis & Western<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$1,369,587	\$19,947,600	\$361,476	1.81
1921.....			1,354,257	19,947,600	1,143,991	5.73
1922.....			1,772,697	19,952,770	1,146,783	5.76

Consolidated with New York, Chicago &amp; St. Louis, Jan. 1, 1923.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$2,892,023
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## Toledo Terminal Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$418,777	\$4,000,000	\$202,127	5.05
1921.....			353,798	4,000,000	124,558	3.11
1922.....			614,235	4,000,000	876,133	9.38
1923.....			573,334	4,000,000	351,763	8.79
1924.....			578,048	4,000,000	246,765	8.67
1925.....			787,400	4,000,000	522,365	13.06
1926.....			538,838	4,000,000	380,346	9.73
1927.....			549,992	4,000,000	339,893	8.50
1928.....			687,567	4,000,000	476,728	11.89
1929.....			585,023	4,000,000	361,086	9.03
1930.....			312,156	4,000,000	76,772	1.92

Year	Net railway operating income	Other income (accounts 509-519, inclusive plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$312,156	\$22,262	\$334,418	\$257,646	1.30
1931 <sup>1</sup> .....	296,663	74,950	371,613	264,290	1.41

<sup>1</sup> Figures taken from preliminary report of capitalization and income.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$961,796
Year 1929.....	2,353,175
Year 1930.....	2,429,353

## RAILROAD LEGISLATION

Union Pacific Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....	\$26,210,900	Common, 10; preferred, 4.	\$28,774,551	\$321,835,100	\$36,936,938	11.48
1921.....	26,210,900	do	28,351,910	321,835,100	34,307,525	10.66
1922.....	26,210,900	do	26,621,319	321,835,100	36,587,340	11.37
1923.....	26,210,900	do	28,844,299	321,835,100	37,758,341	11.73
1924.....	26,210,900	do	27,552,006	321,835,100	35,914,916	11.16
1925.....	26,210,900	do	28,995,490	321,835,100	38,353,983	11.92
1926.....	26,210,900	do	27,852,064	321,835,100	37,724,144	11.72
1927.....	26,210,900	do	27,574,669	321,835,100	38,903,846	12.09
1928.....	26,210,884	do	31,071,696	321,834,700	44,064,172	13.69
1929.....	26,210,884	do	29,271,493	321,834,700	44,257,401	13.75
1930.....	26,210,884	do	25,560,511	321,834,700	38,718,716	12.03

Year	Net railway operating income	Other income (accounts 509-519 inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930.....	\$25,560,511	\$24,112,162	\$49,672,673	\$10,953,958	4.53
1931 <sup>1</sup> .....	24,702,431	16,017,827	40,720,258	15,657,461	2.60

<sup>1</sup> Includes figures for Los Angeles & Salt Lake Railroad Co., Oregon Short Line Railroad Co., and Oregon-Washington Railroad & Navigation Co.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$149,100,556
Year 1929.....	246,662,186
Year 1930.....	259,410,091

## Oregon-Washington Railroad &amp; Navigation Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920.....			\$1,033,387	\$50,000,000	\$3,618,575	-----
1921.....			126,486	50,000,000	3,486,325	-----
1922.....			1,376,275	50,000,000	4,621,061	-----
1923.....			1,094,393	50,000,000	323,861	-----
1924.....			2,956,635	50,000,000	197,735	-----
1925.....			2,129,737	50,000,000	1,185,419	-----
1926.....			4,662,729	50,000,000	1,401,473	2.80
1927.....			2,930,746	50,000,000	542,131	-----
1928.....			2,143,474	50,000,000	1,123,198	-----
1929.....			2,531,083	50,000,000	743,330	-----
1930.....			1,329,520	50,000,000	1,917,208	-----

Year	Net railway operating income	Other income (accounts 509-519 inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930.....	\$1,329,520	\$732,440	\$2,061,960	\$3,979,164	.52
1931 <sup>1</sup> .....					

<sup>1</sup> Included in Union Pacific Railroad Co.

## TOTAL CORPORATE SURPLUS

Year 1920.....	\$1,377,155
Year 1929.....	6,953,388
Year 1930.....	9,726,063

## Los Angeles &amp; Salt Lake Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$3,570,097	\$25,000,000	\$813,665	3.25
1921			1,459,961	25,000,000	1,262,603	
1922			1,425,930	25,000,000	1,319,231	
1923			3,637,371	25,000,000	951,236	3.80
1924			1,877,867	25,000,000	77,819	
1925			2,322,459	25,000,000	75,393	.81
1926			2,560,739	25,000,000	265,476	1.06
1927			2,041,061	25,000,000	393,827	
1928			2,029,502	25,000,000	373,377	
1929			4,467,234	25,000,000	1,940,066	7.76
1930			2,259,130	25,000,000	343,281	

Year	Net railway operating income	Other income (accounts 509-519, inclusive plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931 <sup>1</sup>	\$2,259,130	\$184,172	\$2,443,302	\$2,786,582	0.88

<sup>1</sup> Included in Union Pacific R. R. Co.

## TOTAL CORPORATE SURPLUS

Year 1920		\$2,778,664
Year 1929		4,062,678
Year 1930		3,776,822

## Oregon Short Line Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$8,000,000	Common, 8	\$9,555,838	\$100,000,000	\$7,336,067	7.34
1921	4,000,000	Common, 4	5,630,965	100,000,000	4,465,683	4.47
1922	4,000,000	do	6,825,884	100,000,000	5,508,717	5.51
1923	4,000,000	do	6,034,183	100,000,000	5,467,441	5.47
1924	4,000,000	do	5,526,653	100,000,000	4,044,840	4.04
1925	4,000,000	do	6,590,958	100,000,000	4,914,705	4.91
1926	4,000,000	do	7,024,611	100,000,000	5,524,605	5.52
1927	4,000,000	do	6,936,914	100,000,000	5,428,535	5.43
1928	4,000,000	do	8,574,323	100,000,000	7,469,092	7.47
1929	4,000,000	do	8,605,758	100,000,000	7,732,646	7.73
1930	4,000,000	do	6,148,561	100,000,000	6,208,089	6.21

Year	Net railway operating income	Other income (accounts 509-519, inclusive plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931 <sup>1</sup>	\$6,148,561	\$4,062,163	\$10,210,724	\$4,002,635	2.53

<sup>1</sup> Included in Union Pacific R. R. Co.

## TOTAL CORPORATE SURPLUS

Year 1920		\$60,742,467
Year 1929		81,341,305
Year 1930		83,455,544

## St. Joseph &amp; Grand Island Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$547,129	\$13,599,400	\$361,091	
1921			141,070	13,599,400	73,609	0.54
1922			70,028	13,599,400	125,517	
1923			179,760	13,599,400	100,593	.74
1924			291,406	13,599,400	96,827	.71
1925			619,873	13,599,400	444,783	3.27
1926			488,375	13,599,400	346,661	2.55
1927			505,908	13,599,400	374,498	2.75
1928			771,179	13,599,400	650,258	4.78
1929			767,570	13,599,400	665,017	4.89
1930			690,950	13,599,400	594,408	4.37

Year	Net railway operating income	Other income (accounts 509-519, inclusive plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931	\$690,950	\$72,462	\$763,412	\$169,004	4.52
	400,346	76,397	476,743	169,439	2.81

## TOTAL CORPORATE SURPLUS

Year 1920		\$452,671
Year 1929		3,522,544
Year 1930		4,111,842

## Virginian Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$4,826,060	\$59,226,500	\$3,287,462	5.55
1921	\$1,677,300	Preferred 6	4,726,939	59,226,500	5,245,827	8.86
1922	2,306,287	Preferred 8 1/4	5,373,543	59,226,500	3,408,033	5.75
1923	2,928,160	Preferred 6; common 4	5,872,092	59,226,500	3,671,445	6.20
1924	2,928,160	do	5,536,451	59,226,500	3,315,141	5.60
1925	3,553,590	Preferred 6; common 6	6,458,207	59,226,500	3,859,777	6.52
1926	3,866,305	Preferred 6; common 7	9,856,725	59,226,500	6,717,047	11.34
1927	3,866,305	do	9,075,249	59,226,500	5,908,561	9.98
1928	3,866,305	do	7,096,053	59,226,500	4,237,471	7.15
1929	4,179,020	Preferred 6; Common 8	8,792,098	59,226,500	5,752,784	9.71
1930	4,179,020	do	7,415,809	59,226,500	4,455,873	7.52

Year	Net railway operating income	Other income (accounts 509-519, inclusive plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931	\$7,415,809	\$1,045,211	\$8,461,080	\$4,005,207	2.11
	6,345,611	1,083,523	7,429,134	4,145,642	1.79

## TOTAL CORPORATE SURPLUS

Year 1920		\$14,217,171
Year 1929		27,653,136
Year 1930		27,843,790

## Wabash Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$5,565,895	\$138,492,967	\$2,052,283	1.48
1921			3,863,340	138,120,700	2,017,576	1.46
1922			4,107,421	138,120,700	1,210,388	.88
1923			8,941,275	138,120,700	5,410,874	3.92
1924			9,347,780	138,120,700	5,474,949	3.96
1925	\$2,585,361	Preferred A, 3%	12,252,515	138,120,700	7,946,438	5.75
1926	3,458,426	Preferred A, 5	12,562,083	138,120,699	8,217,488	5.95
1927	3,576,920	Preferred A, 5; preferred B, 5	9,611,677	138,120,699	4,763,610	3.45
1928	3,576,920	do.	11,950,039	138,120,699	6,401,277	4.63
1929	3,461,790	Preferred A, 5	13,251,591	138,120,699	7,854,404	5.69
1930	3,691,485	Preferred A, 5; preferred B, 10	7,711,675	138,120,699	3,781,755	2.74
Year		Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930		\$7,711,675	\$3,384,146	\$11,095,821	\$7,314,066	1.52
1931		366,896	564,034	197,039	7,751,901	.03

## TOTAL CORPORATE SURPLUS

Year 1920	\$12,174,588
Year 1929	47,747,780
Year 1930	44,284,522

## Ann Arbor Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$112,964	\$7,250,000	\$149,600	1.00
1921			482,688	7,250,000	79,049	1.09
1922			426,862	7,250,000	46,179	.64
1923			460,554	7,250,000	80,009	1.10
1924			743,026	7,250,000	336,857	4.65
1925			1,028,837	7,250,000	459,679	6.34
1926			969,463	7,250,000	422,964	5.83
1927			780,182	7,250,000	256,787	3.54
1928			935,312	7,250,000	471,488	6.50
1929			1,042,452	7,250,000	628,812	8.67
1930	\$1,472,500	Common, 3%; preferred 10	533,514	7,250,000	127,096	1.75
Year		Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930		\$533,514	\$26,392	\$559,906	\$432,810	1.29
1931		22,643	7,785	30,431	446,572	.07

## TOTAL CORPORATE SURPLUS

Year 1920	\$2,037,929
Year 1929	6,129,233
Year 1930	4,787,701

## Western Maryland Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$396,539	\$77,167,148	\$57,735	0.07
1921			3,027,627	77,167,148	421,296	.55
1922			3,074,577	77,167,148	49,745	.06
1923			4,621,552	77,167,148	1,671,169	2.17
1924			3,560,657	77,167,148	574,148	.74
1925			4,726,158	77,167,148	1,779,059	2.31
1926			6,075,223	77,167,148	3,259,339	4.22
1927			6,131,593	77,167,148	3,275,078	4.24
1928			5,250,619	77,167,148	2,375,185	3.08
1929			5,824,583	77,167,148	2,917,822	3.78
1930			5,253,239	77,167,148	1,960,974	2.54
Year		Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930		\$5,253,239	\$183,656	\$5,436,895	\$3,475,921	1.56
1931		4,343,199	136,690	4,479,889	3,461,929	1.29

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,892,001
Year 1929	17,392,322
Year 1930	19,399,771

## Wheeling &amp; Lake Erie Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$386,119	\$55,868,858	\$56,725	0.10
1921			1,755,356	55,868,858	670,129	1.20
1922			393,881	55,868,858	206,267	.37
1923			2,709,241	55,868,858	1,746,003	3.13
1924			2,361,489	55,868,858	1,282,744	2.30
1925			4,364,972	55,868,858	3,286,279	5.88
1926			4,398,877	55,868,858	3,507,355	6.28
1927			3,048,020	55,868,858	2,364,833	4.29
1928	\$831,782	Preferred 7	4,975,836	55,868,858	4,364,748	7.81
1929	3,327,128	Preferred 28	5,115,433	55,868,858	4,679,321	8.38
1930	2,287,400	Preferred 19, 25	3,052,945	55,868,858	2,647,819	4.74
Year		Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930		\$3,052,945	\$428,960	\$3,481,905	\$834,086	4.17
1931		1,186,801	373,114	1,557,915	796,297	1.96

## TOTAL CORPORATE SURPLUS

Year 1920	\$3,291,139
Year 1929	21,420,702
Year 1930	21,736,497



## Bessemer &amp; Lake Erie Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$1,000,000	Common, 200	\$5,222,529	\$500,000	\$2,982,758	596.55
1921	750,000	Common, 150	2,279,367	500,000	859,577	171.92
1922	1,000,000	Common, 200	4,809,526	500,000	3,496,115	699.22
1923	1,000,000	do	6,835,256	500,000	5,699,304	1,139.86
1924	1,250,000	Common, 250	2,773,716	500,000	2,244,714	448.94
1925	2,000,000	Common, 400	5,815,147	500,000	4,265,232	853.05
1926	2,000,000	do	6,294,544	500,000	5,322,367	1,064.48
1927	2,250,000	Common, 450	3,521,747	500,000	2,740,085	549.81
1928	2,500,000	Common, 500	5,207,732	500,000	4,576,727	915.345
1929	2,500,000	do	7,444,665	500,000	6,653,645	1,330.73
1930	2,000,000	Common, 400	4,736,008	500,000	4,417,763	883.55

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$4,736,008	\$523,155	\$5,259,163	\$841,400	6.25
1931	2,373,536	385,486	2,759,022	1,748,649	1.58

## TOTAL CORPORATE SURPLUS

Year 1920	\$20,455,045
Year 1929	40,750,617
Year 1930	43,119,055

## Birmingham Southern Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$22,871	\$1,200,000	\$16,889	
1921			20,866	1,200,000	16,467	
1922			181,036	1,200,000	185,689	15.47
1923			12,225	1,200,000	7,801	
1924			142,872	1,200,000	148,843	12.40
1925			136,047	1,200,000	137,637	11.47
1926			109,803	1,200,000	111,769	9.31
1927			82,491	1,200,000	17,470	
1928			155,054	1,200,000	123,903	
1929			54,461	1,200,000	48,735	
1930			148,671	1,200,000	144,829	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$148,671	\$8,881	\$157,552	\$5,039	
1931					

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$1,756,869
Year 1929	2,083,738
Year 1930	1,971,587

## Carbon County Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920						
1921						
1922						
1923			\$8,211	\$5,000	\$8,211	123.28
1924			6,164	5,000	6,164	
1925			12,645	5,000	2,798	
1926			15,697	5,000	835	
1927			8,965	5,000	7,478	
1928			24,766	5,000	2,616	52.32
1929			21,863	5,000	2,451	
1930			17,936	5,000	16,163	323.26

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$17,936		\$17,936	\$1,773	10.12
1931					

<sup>1</sup> Circular filed.<sup>2</sup> Data not available.

## TOTAL CORPORATE SURPLUS

Year 1929	\$12,712
Year 1930	3,461

Chicago, Lake Shore & Eastern Ry. Co., lessor company.  
 Connellsville & Monongahela Railway Co., lessor company.

## Donora Southern Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$31,562	\$150,000	\$31,670	
1921			59,633	150,000	60,806	
1922			88,760	150,000	89,552	59.70
1923			75,865	150,000	82,820	55.21
1924			2,645	150,000	2,767	
1925			77,808	150,000	79,488	52.90
1926			11,952	150,000	14,493	9.66
1927			55,800	150,000	58,086	38.72
1928			38,376	150,000	41,892	27.93
1929			25,462	150,000	26,618	17.68
1930			4,097	150,000	6,809	4.54

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$4,097	\$3,272	\$7,369	\$561	13.14
1931					

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$294,916
Year 1929	45,331
Year 1930	50,295

## Duluth &amp; Iron Range Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$975,000	Common, 15	\$3,644,373	\$6,500,000	\$2,903,958	44.68
1921	975,000	do.	255,841	6,500,000	206,415	3.18
1922	1,300,000	Common, 20	1,696,324	6,500,000	1,616,412	24.87
1923	1,625,000	Common, 25	1,758,480	6,500,000	2,272,740	34.97
1924	975,000	Common, 15	257,981	6,500,000	1,429,857	22.00
1925	975,000	do.	1,589,496	6,500,000	1,619,845	23.38
1926	975,000	do.	1,917,645	6,500,000	1,835,999	28.25
1927	975,000	do.	1,440,967	6,500,000	1,383,200	21.28
1928	1,300,000	Common, 20	1,721,944	6,500,000	1,750,387	27.07
1929	1,300,000	do.	2,225,937	6,500,000	2,212,011	34.03
1930 <sup>1</sup>						

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930 <sup>1</sup>					

<sup>1</sup> Leased to Duluth, Missabe & Northern Ry. Co., effective Jan. 10, 1930. Operating returns for period Jan. 1 to Jan. 9, inclusive, are included in the report of that company.

## TOTAL CORPORATE SURPLUS

Year 1920	\$20,832,069
Year 1929	25,503,096
Year 1930 <sup>1</sup>	

## Duluth, Missabe &amp; Northern Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$3,084,375	Common, 75	\$7,260,404	\$4,112,500	\$5,326,415	129.52
1921	3,084,375	do.	3,650,389	4,112,500	2,924,587	71.11
1922	3,084,375	do.	6,512,845	4,112,500	6,321,785	153.72
1923	4,112,000	Common, 100	10,632,786	4,112,500	10,583,419	257.35
1924	3,260,000	Common, 80	3,801,268	4,112,500	4,407,747	107.18
1925	3,260,000	do.	8,123,036	4,112,500	7,216,881	175.49
1926	4,112,500	Common, 100	8,015,773	4,112,500	8,151,140	198.20
1927	4,112,500	do.	6,017,466	4,112,500	6,633,562	161.30
1928	4,112,500	do.	8,023,924	4,112,500	7,802,954	191.93
1929	4,112,500	do.	10,908,122	4,112,500	9,468,611	230.24
1930 <sup>1</sup>	4,112,500	do.	7,687,349	4,112,500	7,409,202	180.16

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930 <sup>1</sup>					
1931	\$7,687,349	\$1,188,386	\$8,875,735	\$1,466,533	6.05
	2,741,254	336,976	3,078,230	2,619,128	1.18

<sup>1</sup> Includes returns for Duluth & Iron Range R. R. Co. for the period Jan. 1 to Jan. 9; the property of this company having been leased to Duluth, Missabe & Northern Ry. Co. effective Jan. 10, 1930.

## TOTAL CORPORATE SURPLUS

Year 1920	\$33,021,405
Year 1929	63,925,132
Year 1930	67,143,142

## Elgin, Joliet &amp; Eastern Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$400,000	Common, 4	\$3,534,985	\$10,000,000	\$1,123,358	11.23
1921	400,000	do.	3,334,651	10,000,000	1,225,736	12.26
1922	400,000	do.	5,132,091	10,000,000	1,665,852	16.66
1923	600,000	Common, 6	5,409,365	10,000,000	2,592,177	25.92
1924	400,000	Common, 4	3,311,421	10,000,000	269,758	2.70
1925	400,000	do.	4,013,552	10,000,000	1,311,527	13.12
1926	600,000	Common, 6	5,657,361	10,000,000	2,060,574	20.61
1927	600,000	do.	4,178,780	10,000,000	1,545,241	15.45
1928	600,000	do.	3,730,959	10,000,000	1,196,876	11.97
1929	600,000	do.	5,452,263	10,000,000	960,663	9.61
1930	600,000	do.	3,015,064	10,000,000	1,657,994	16.58

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$3,015,064	\$310,265	\$3,325,329	\$1,667,335	1.99
1931	8,411	155,453	147,082	1,847,962	.08

## TOTAL CORPORATE SURPLUS

Year 1920	\$4,814,056
Year 1929	13,144,794
Year 1930	14,214,263

## Elna &amp; Montrose Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$52,657	\$60,000	\$51,197	
1921			24,663	60,000	25,608	
1922			24,410	60,000	23,572	
1923			25,278	60,000	24,361	
1924			33,882	60,000	33,000	55.77
1925			32,635	60,000	37,343	62.24
1926			36,301	60,000	745	
1927			1,438	60,000	6,594	
1928			7,331	60,000	13,025	21.71
1929			12,015	60,000	10,672	
1930			11,795	60,000		

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$11,795	\$988	\$10,807	\$184	
1931 <sup>1</sup>					

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$35,883
Year 1929	119,658
Year 1930	124,263

*Hannibal Connecting Railroad Co.*

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$51,708	\$200,000	\$56,677	
1921			1,825	200,000	3,716	
1922			38,743	200,000	33,709	16.88
1923			38,037	200,000	29,384	14.69
1924			12,590	200,000	10,028	5.01
1925			13,886	200,000	6,476	
1926			1,477	200,000	8,834	
1927			9,453	200,000	11,341	
1928			6,180	200,000	8,786	
1929			938	200,000	3,495	
1930			3,293	200,000	5,890	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930					
1931 <sup>1</sup>	\$5,293	\$4,903	\$1,610	\$7,500	0.21

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$74,385
Year 1929	111,613
Year 1930	106,870

Interstate Transfer Railway Co., lessor company.

*Johnstown & Stony Creek Railroad Co.*

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920				\$91,500	\$12,807	14.00
1921			\$29,635	91,500	12,914	14.11
1922			48,919	91,500	42,782	46.76
1923			16,449	91,500	10,448	11.42
1924			10,505	91,500	4,536	4.96
1925			3,562	91,500	2,974	3.25
1926			23,108	91,500	17,602	19.24
1927			24,928	91,500	10,093	11.03
1928			7,487	91,500	24,436	
1929			11,086	91,500	4,369	
1930			6,043	91,500	9,713	

Year	Net railway operating income	Other income (accounts 509-519 inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930					
1931 <sup>1</sup>	\$6,043	\$300	\$6,343	\$16,056	0.40

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$10,801
Year 1929	55,774
Year 1930	45,947

*Lake Terminal Railroad Co.*

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$288,228	\$2,000,000	\$287,039	
1921			173,929	2,000,000	177,623	8.88
1922			190,135	2,000,000	163,400	8.17
1923			5,350	2,000,000	3,997	
1924			125,425	2,000,000	124,483	
1925			26,173	2,000,000	27,496	1.37
1926			2,662	2,000,000	1,106	
1927			135,866	2,000,000	172,975	8.65
1928			44,131	2,000,000	45,626	2.28
1929			181,087	2,000,000	179,515	8.98
1930			42,045	2,000,000	40,101	2.01

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$42,045	\$1,422	\$43,467	\$3,366	12.91
1931 <sup>1</sup>	95,421	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$586,227
Year 1929	278,954
Year 1930	311,106

*McKeesport Connecting Railroad Co.*

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$160,653	\$1,000,000	\$154,096	
1921			261,324	1,000,000	268,752	
1922			11,580	1,000,000	9,791	
1923			33,871	1,000,000	32,782	
1924			117,146	1,000,000	116,347	
1925			36,676	1,000,000	35,659	
1926			12,125	1,000,000	10,955	
1927			154,071	1,000,000	152,663	
1928			111,248	1,000,000	110,289	
1929			440	1,000,000	1,549	0.15
1930			2,723	1,000,000	527	

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$2,723	\$2,196	\$4,919		
1931 <sup>1</sup>					

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$180,917
Year 1929	547,722
Year 1930	523,208

Monongahela Southern Railroad Co., lessor company.



## Newburgh &amp; South Shore Railway Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$212,291	\$1,500,000	\$263,591	7.28
1921			200,153	1,500,000	109,187	12.07
1922			252,857	1,500,000	181,092	2.43
1923			104,003	1,500,000	36,493	9.88
1924			206,973	1,500,000	148,167	18.03
1925	\$90,000	Common, 6	306,666	1,500,000	270,480	15.98
1926	60,000	Common, 4	283,946	1,500,000	239,659	25.90
1927	90,000	Common, 6	198,474	1,500,000	388,495	27.84
1928	90,000	do.	444,824	1,500,000	319,291	21.29
1929	90,000	do.	344,487	1,500,000	129,256	8.62
1930	45,000	Common, 3	147,147	1,500,000		

Year	Net railway operating income	Other income (accounts 509-519 inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930	\$147,147	\$5,577	\$152,724	\$23,468	6.51
1931	65,188	5,780	71,968	44,989	

<sup>1</sup> Figures taken from preliminary report of capitalization and income.

## TOTAL CORPORATE SURPLUS

Year 1920	\$479,535
Year 1929	2,202,743
Year 1930	2,277,827

## Northampton &amp; Bath Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$73,238	\$500,000	\$73,109	36.66
1921			10,370	500,000	10,732	9.44
1922			12,359	500,000	183,303	6.69
1923			52,660	500,000	47,188	11.25
1924			31,443	500,000	56,262	10.57
1925			48,950	500,000	46,840	9.17
1926			36,382	500,000	52,843	9.17
1927			33,495	500,000	45,827	6.76
1928			27,329	500,000	33,818	6.68
1929			24,353	500,000	33,378	
1930			24,323	500,000		

Year	Net railway operating income	Other income (accounts 509-519 inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930	\$24,323	\$19,559	\$43,882	\$10,504	4.18
1931					

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1920	\$135,691
Year 1929	352,905
Year 1930	386,222

## St. Clair Terminal Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$1,695	\$1,000,000	\$92,210	9.22
1921						

<sup>1</sup> Leased to Union Railroad Co., effective Jan. 1, 1921.

Total corporate surplus, year, 1920, \$434,220.

Spirit Lake Transfer Railway Co., lessor company.

## Union Railroad Co. (of Pennsylvania)

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$1,145,514	\$5,000,000	\$91,246	21.01
1921	\$500,000	Common, 10	2,139,492	5,000,000	1,050,747	57.35
1922	750,000	Common, 15	3,899,383	5,000,000	2,867,558	48.57
1923	1,000,000	Common, 20	3,383,254	5,000,000	2,428,453	9.58
1924	500,000	Common, 10	1,417,550	5,000,000	479,064	36.17
1925	750,000	Common, 15	2,743,115	5,000,000	1,808,305	37.26
1926	1,000,000	Common, 20	2,755,651	5,000,000	1,862,782	18.82
1927	1,000,000	do.	1,818,288	5,000,000	926,033	47.20
1928	1,250,000	Common, 25	3,264,519	5,000,000	2,359,754	59.28
1929	1,250,000	do.	3,954,668	5,000,000	2,964,247	22.67
1930	750,000	Common, 15	2,108,522	5,000,000	1,133,331	

Year	Net railway operating income	Other income (accounts 509-519 inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551 inclusive)	Ratio of total income to fixed charges
1930	\$2,108,522	\$145,777	\$2,254,299	\$1,120,968	2.01
1931	852,883	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year, 1920	\$6,806,837
Year, 1929	15,303,923
Year, 1930	15,669,369

## Youngstown &amp; Northern Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$25,875	\$10,000	\$26,471	617.45
1921			3,810	10,000	6,971	44.39
1922			63,913	10,000	61,745	143.96
1923			5,224	10,000	4,439	432.16
1924			16,511	10,000	14,396	369.83
1925			44,426	10,000	45,216	85.60
1926			38,290	10,000	36,983	208.46
1927			10,595	10,000	8,560	
1928			28,461	10,000	20,846	
1929			7,688	10,000	7,727	
1930			36,713	10,000	36,917	

## Youngstown &amp; Northern Railroad Co.—Continued

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930.....	\$36,713	\$1,860	\$34,853	\$2,064	
1931 <sup>1</sup> .....					

<sup>1</sup> Figures not available.

## TOTAL CORPORATE SURPLUS

Year 1929.....	\$78,917
Year 1929.....	91,213
Year 1930.....	49,889

## Youghiogheny Northern Railway Co., lessor company

Statement showing payments by carriers on account of excess net railway operating income under paragraph 6 of section 15a of the interstate commerce act

Class	Name of carrier	Excess income payments	Controlled by
2	Ashley, Drew & Northern Ry. Co.	\$5,811.11	
3	Atlantic & Carolina R. R. Co.	364.57	
3	Augusta Northern Ry. Co.	5,070.80	
3	Augusta R. R. Co.	47.83	
3 I	Bauxite & Northern Ry. Co.	11,851.72	Aluminum Co. of America.
S	The Bay Terminal R. R. Co.	2,449.74	
3	Beaver, Meade & Englewood R. R. Co.	1,431.45	
1 I	Bessemer & Lake Erie R. R. Co.	442,280.00	United States Steel Corporation.
S I	Birmingham Southern R. R.	31,371.43	Tennessee Coal & Iron Co.
2 I	Brimstone R. R. & Canal Co.	42,642.21	Union Sulphur Co.
S I	Conemaugh & Black Lick R. R. Co.	81,919.50	Bethlehem Steel.
2 I	Cambria & Indiana R. R. Co.	18,630.46	J. H. Weaver.
2 I	Campbell's Creek R. R. Co.	548.53	Campbell's Creek Coal Co.
3 I	Central Ry. Co. of Arkansas.	2,064.44	Fort Smith Lumber Co.
2 I	Chattahoochee Valley Ry.	16,140.12	West Point Manufacturing Co.
2 I	Chicago & Illinois Midland Ry. Co.	199,219.75	Commonwealth-Edison.
S I	Chicago, West Pullman & Southern Ry. Co.	5,035.68	International Harvester.
3	Collins & Glenville R. R. Co.	162.50	
3	Cornwall R. R. Co.	177,091.48	Bethlehem Steel.
2 I	Cowlitz, Chehalis & Cascade Ry.	3,000.00	Admiralty Investment Co.
2 I	Durham & Southern Ry. Co.	54,999.20	Duke interests.
2	Dayton-Goose Creek Ry. Co.	183,127.38	
2	Dayton Union Ry. Co.	963.81	
3	Dekalb & Western R. R. Co.	10,025.47	
1	Detroit & Toledo Shore Line R. R.	68,011.43	
1 I	Detroit, Toledo & Ironton R. R.	239,461.63	Ford interests.
1 I	Duluth, Missabe & Northern Ry. Co.	5,808,256.61	United States Steel Corporation.
S I	East Jersey Railroad & Terminal Co.	3,332.61	Tidewater Oil.
2 I	East Jordan & Southern R. R. Co.	4,753.61	East Jordan Lumber Co.
1 I	Elgin, Joliet & Eastern Ry. Co.	55,147.23	United States Steel Corporation.
3	Erie & Michigan Railway & Navigation Co.	2,297.08	
3 I	Fordyce & Princeton R. R. Co.	3,097.50	Crossett Land Co.
S I	Fort Worth Belt Ry. Co.	79,485.35	Armour & Swift.
2	Franklin & Abbeville Ry. Co.	15,320.18	
2 I	Genesee & Wyoming R. R. Co.	486,107.56	International Salt Co.
3 I	Gideon & North Island R. R. Co.	960.71	Gideon & Anderson Lumber.
S I	Hannibal Connecting R. R. Co.	17,532.49	Atlas Portland Cement Co.
3 I	Hutchinson & Northern Ry. Co.	154.25	Carey interests.
2 I	Illinois Terminal Co.	800,000.00	Illinois Power & Light.
S I	Indiana Northern Ry. Co.	2,942.92	Oliver Plow Works.
3	Indiana Creek Valley Ry. Co.	3,852.92	
S I	Ironton R. R. Co.	574,639.16	Thomas Iron Co.
2 I	Johnstown & Stony Creek R. R. Co.	1,162.49	Federal Steel.
2	Jonesboro, Lake City & Eastern R. R. Co.	42,450.00	
2 I	Kanawha, Glen Jean & Eastern R. R. Co.	5,460.88	McKell interests.
3	Kinston Carolina R. R. Co.	62.91	
2 I	Longview, Portland & Northern Ry. Co.	5,310.43	Long Bell Lumber Co.
2 I	Lakeside & Marblehead R. R. Co.	5,478.45	Kelly Island Lime Co.

Statement showing payments by carriers on account of excess net railway operating income under paragraph 6 of section 15a of the interstate commerce act—Contd.

Class	Name of carrier	Excess income payments	Controlled by
2 I	Lancaster & Chester Ry. Co.	\$14,760.90	Spring Mills Co.
S	La Salle & Bureau County R. R. Co.	18,421.85	
3	Laurinburg & Southern R. R. Co.	2,518.23	
2 I	Ligonier Valley R. R. Co.	63,165.27	Mellon interests.
I	Louisiana & Arkansas Ry. Co.	8,000.02	
W	Louisiana & Mississippi Railroad & Transportation Co.	20.63	
3	Louisville, New Albany & Corydon R. R. Co.	3,300.00	
S I	Ludington & Northern Ry. Co.	2,865.56	Sterans Salt Co.
2	Middletown & Unionville R. R. Co.	51.71	
S	Missouri & Illinois Bridge & Belt R. R. Co.	3,026.82	
3	Mount Hood R. R. Co.	7,359.83	Warren Foundry Co.
3 I	Mount Hope Mineral R. R. Co.	1,596.84	Uranian Lumber Co.
3 I	Natchez, Uralia & Ruston Ry. Co.	330.95	Delta Land Co.
3 I	Neame, Carson & Southern R. R. Co.	2,120.41	Nevada Consolidated Copper.
1 I	Nevada Northern Ry. Co.	39,729.26	
1	New Orleans, Texas & Mexico Ry. Co.	5,248.35	Bethlehem Steel.
S I	Patapasco & Back Rivers R. R. Co.	50,355.00	Do
S I	Philadelphia, Bethlehem & New England R. R. Co.	152,191.47	Pittsburgh Coal Co.
2 I	Pittsburgh, Lisbon & Western R. R. Co.	3,818.57	
2	Port Huron & Detroit R. R. Co.	195,000.87	
2	Potato Creek R. R. Co.	1,005.81	
1	Richmond, Fredericksburg & Potomac R. R. Co.	194,919.88	
3	Rockport, Langdon & Northern Ry. Co.	441.10	San Francisco Land Co.
2 I	South San Francisco Belt Ry.	1,374.54	Southern California Edison Co.
2 I	San Joaquin & Eastern R. R. Co.	12,539.03	
3	San Luis Central.	246.12	
S I	St. Joseph Belt Ry. Co.	2,624.76	Swift interests.
2	San Antonio Southern Ry. Co.	2,460.86	
3 I	Santa Maria Valley Ry. Co.	5,500.00	Santa Maria Oil Fields Co.
3	Shreveport, Houston & Gulf R. R. Co.	1,674.27	
S I	Sioux City Terminal Ry. Co.	5,349.59	Sioux City Stockyards.
3 I	South Buffalo Ry. Co.	23,768.50	Bethlehem Steel.
S I	Steelton & Highspire R. R. Co.	42,935.90	Do.
2	Sugar Land Ry. Co.	27,435.67	
3 I	Talbotton R. R. Co.	35.56	Persons Bros.
2 I	Tionesta Valley Ry. Co.	20,944.42	Central Leather Co.
3	Toledo Terminal R. R. Co.	18,337.07	
3	Trinity Valley Southern R. R. Co.	102.37	
2	Tuckerton R. R. Co.	1,949.68	
2 I	Tucson, Cornelia & Gila Bend R. R. Co.	11,997.34	Douglas Copper Co.
3	Tuskegee R. R. Co.	2,480.90	
3 I	Unity Railways Co.	141,849.59	Union Collieries Co.
2 I	Upper Marion & Plymouth R. R.	2,984.58	Wood, Iron & Steel Co.
3 I	Warren & Ouachita Valley.	14,444.45	Arkansas Lumber Co.
3	Warrenton R. R. Co.	32,222.21	
3	Washington, Brandywine & Point Lookout R. R.	85.19	
3 I	Washington Run R. R. Co.	6,744.83	Washington Coal & Coke.
2	Wichita Falls & Southern R. R. Co.	369.71	
S I	Wyandotte Terminal R. R. Co.	8,241.17	Michigan Alkali Co.
	Total.....	10,679,085.62	

Class 1 companies are those having annual operating revenues above \$1,000,000.

Class 2 companies are those having annual operating revenues from \$100,000 to \$1,000,000.

Class 3 companies are those having annual operating revenues below \$100,000.

S indicates switching and terminal companies.

W indicates water-line companies.

I indicates companies controlled by other industries.

## STATUS OF GENERAL RAILROAD CONTINGENT FUND

Payments by carriers of excess income as above.....	\$10,679,085.62
Payments by carriers of interest on overdue payments.....	38,837.35
Interest from investments in obligations of the United States.....	2,557,613.23
Interest from bank balances.....	2,062.36
Total.....	13,277,598.56

List of railroads controlled by the United States Steel Corporation or its subsidiaries, showing estimated recapture liability for each year from 1920 to 1930, inclusive, the amounts paid into the contingent fund, dividends paid on common stock, dividend rates, and net income during same years and total corporate surplus as of December 31, each year

Carrier	Year	Estimated recapture liability	Amount paid to contingent fund	Dividends		Net income	Total corporate surplus as of Dec. 31
				Rate, per cent	Amount		
Bessemer & Lake Erie	1920	\$903,684		200	\$1,000,000	\$2,982,758	\$20,455,045
Do.	1921			150	750,000	859,577	20,728,236
Do.	1922	850,898		300	1,000,000	3,466,115	23,234,898
Do.	1923	2,078,645		300	1,000,000	5,699,304	27,926,318
Do.	1924	70,700		250	2,250,000	2,244,714	28,913,092
Do.	1925	1,155,103		400	2,000,000	4,265,232	31,161,231
Do.	1926	1,774,048		400	2,000,000	5,322,397	34,486,643
Do.	1927	385,572		450	2,250,000	2,749,035	34,741,592
Do.	1928	1,104,908		500	2,500,000	4,576,727	36,663,571
Do.	1929	2,211,653		500	2,500,000	6,653,645	40,750,617
Do.	1930	835,713		400	2,000,000	4,417,763	43,119,055
Total		11,370,624	\$442,280		18,250,000	43,267,267	
Birmingham Southern R. R.	1920					-16,889	1,756,869
Do.	1921					-16,467	1,739,780
Do.	1922	72,240				185,689	1,926,209
Do.	1923					-7,804	1,918,400
Do.	1924	49,780				148,843	2,067,371
Do.	1925	43,885				137,637	2,203,118
Do.	1926	25,705				111,769	2,313,806
Do.	1927					-87,470	2,225,557
Do.	1928	31,674				-123,908	2,101,317
Do.	1929	13,093				-48,735	2,083,738
Do.	1930					-144,829	1,971,587
Total		236,077	31,371			137,836	
Carbon County Ry.	1920						
Do.	1921						
Do.	1922						
Do.	1923					-8,211	-8,211
Do.	1924					6,164	-2,047
Do.	1925	1,468				-2,798	-4,843
Do.	1926	2,846				-833	-5,419
Do.	1927	1,852				-7,478	-12,597
Do.	1928	5,471				2,616	-10,281
Do.	1929	7,000				565	9,716
Do.	1930	3,358				16,163	8,451
Total		21,995				6,188	
Donora Southern	1920					-31,670	-294,916
Do.	1921					-60,900	-356,263
Do.	1922	-10,197				89,552	-265,198
Do.	1923	-1,949				82,820	-153,851
Do.	1924					-2,767	-156,580
Do.	1925	2,627				79,488	-77,150
Do.	1926					14,493	-67,171
Do.	1927					58,086	-11,123
Do.	1928					41,892	22,287
Do.	1929					26,518	48,331
Do.	1930					6,809	50,295
Total		14,773				304,315	
Duluth & Iron Range R. R.	1920	1,183,138		15	975,000	2,903,958	20,832,069
Do.	1921			15	975,000	206,415	20,796,426
Do.	1922			20	1,300,000	1,616,412	21,182,477
Do.	1923	100,222		25	1,625,000	2,272,740	21,953,502
Do.	1924			15	975,000	1,429,857	22,454,038
Do.	1925			15	975,000	1,519,845	22,933,983
Do.	1926	123,283		15	975,000	1,835,990	23,774,493
Do.	1927			15	975,000	1,863,260	24,175,969
Do.	1928	327		20	1,300,000	1,759,387	24,912,924
Do.	1929	267,233		20	1,300,000	2,212,011	25,593,096
Do.	1930			(?)	(?)	(?)	
Total		1,670,203			11,375,000	17,139,914	

<sup>1</sup> Put in operation July 5, 1923.

<sup>2</sup> Leased to D. M. & N. Jan. 10, 1930.

List of railroads controlled by the United States Steel Corporation or its subsidiaries, showing estimated recapture liability for each year from 1920 to 1930, inclusive, the amounts paid into the contingent fund, dividends paid on common stock, dividend rates, and net income during same years and total corporate surplus as of December 31, each year—Continued

Carrier	Year	Estimated recapture liability	Amount paid to contingent fund	Dividends		Net income	Total corporate surplus as of Dec. 31
				Rate, per cent	Amount		
Duluth, Missabe & Northern Ry.	1920	\$2,737,594		75	\$3,084,375	\$5,326,415	\$33,021,405
Do.	1921	699,620		75	3,084,375	2,924,587	33,642,330
Do.	1922	1,879,753		75	3,084,375	6,321,785	36,882,802
Do.	1923	4,182,032		100	4,112,000	10,583,419	43,289,836
Do.	1924	861,153		80	3,290,000	4,407,747	44,435,445
Do.	1925	2,620,173		80	3,290,000	7,216,881	48,341,574
Do.	1926	2,534,779		100	4,112,500	8,151,140	52,369,944
Do.	1927	1,584,831		100	4,112,500	6,633,562	54,849,467
Do.	1928	2,006,317		100	4,112,500	7,892,954	58,592,882
Do.	1929	4,052,662		100	4,112,500	9,468,511	63,925,132
Do.	1930	1,613,922		100	4,112,500	7,469,202	67,145,142
Total		25,462,836	\$5,808,257		40,507,625	76,336,203	
Elgin, Joliet & Eastern	1920	334,904		4	400,000	1,123,358	4,814,085
Do.	1921	565,339		4	400,000	1,225,736	5,672,875
Do.	1922	1,293,920		4	400,000	1,665,852	6,951,107
Do.	1923	1,579,434		6	600,000	2,592,177	8,921,662
Do.	1924	630,900		4	400,000	269,758	8,800,262
Do.	1925	1,073,769		4	400,000	1,311,527	9,712,337
Do.	1926	1,722,993		6	600,000	2,060,574	11,169,912
Do.	1927	719,035		6	600,000	1,545,241	12,232,690
Do.	1928	494,759		6	600,000	1,196,876	12,753,492
Do.	1929	959,824		6	600,000	960,663	13,144,794
Do.	1930			6	600,000	1,657,994	14,214,263
Total		9,374,365	55,147		5,600,000	15,609,756	
Etna & Montrose R. R.	1920					-51,197	-85,883
Do.	1921					-23,608	-109,491
Do.	1922					-23,572	-133,063
Do.	1923					-24,361	-157,424
Do.	1924					-33,000	-190,424
Do.	1925	7,788				33,463	-157,786
Do.	1926	10,420				37,343	-120,443
Do.	1927					-745	-121,188
Do.	1928					-6,594	-132,684
Do.	1929					13,025	-119,658
Do.	1930					-10,673	-124,263
Total		18,208				-89,919	
Hannibal Connecting	1920					-56,677	74,385
Do.	1921					-3,716	70,669
Do.	1922	14,565				33,769	104,441
Do.	1923	11,509				29,384	134,152
Do.	1924	982				10,028	144,179
Do.	1925	2,399				-5,476	138,698
Do.	1926					-2,534	135,774
Do.	1927					-11,341	123,834
Do.	1928					-8,725	115,108
Do.	1929					-3,495	111,613
Do.	1930					-5,890	106,870
Total		29,455	17,532			-25,474	
Johnstown & Stony Creek R. R.	1920					12,807	-10,901
Do.	1921	5,777				7,071	2,013
Do.	1922	19,091				42,782	43,416
Do.	1923					10,448	53,864
Do.	1924					4,536	58,400
Do.	1925					2,974	61,375
Do.	1926					17,602	78,977
Do.	1927					10,093	89,070
Do.	1928					-26,625	62,445
Do.	1929					-6,671	55,774
Do.	1930					-9,713	45,947
Total		24,868	1,162			65,304	



List of railroads controlled by the United States Steel Corporation or its subsidiaries, showing estimated recapture liability for each year from 1920 to 1930, inclusive, the amounts paid into the contingent fund, dividends paid on common stock, dividend rates, and net income during same years and total corporate surplus as of December 31, each year—Continued

Carrier	Year	Estimated recapture liability	Amount paid to contingent fund	Dividends		Net income	Total corporate surplus as of Dec. 31
				Rate, per cent	Amount		
Lake Terminal R. R.	1920					-\$287,063	-\$386,227
Do.	1921	86,182				177,624	-208,854
Do.	1922	9,195				163,400	-45,446
Do.	1923					-3,987	-78,584
Do.	1924					-124,483	-198,459
Do.	1925					27,496	-124,572
Do.	1926					-1,106	-120,791
Do.	1927					172,975	52,128
Do.	1928					45,626	103,342
Do.	1929	43,212				179,515	278,954
Do.	1930					40,101	311,106
Total		58,589					391,700
Newburgh & South Shore Ry.	1920					-263,591	479,535
Do.	1921					109,187	593,796
Do.	1922					181,092	776,369
Do.	1923					36,493	787,868
Do.	1924					148,167	918,366
Do.	1925	6,376		6	\$90,000	270,480	1,098,856
Do.	1926			4	60,000	239,659	1,300,204
Do.	1927			6	90,000	388,495	1,631,537
Do.	1928	40,566		6	90,000	417,569	1,973,787
Do.	1929	14,190		6	90,000	319,291	2,292,743
Do.	1930			3	45,000	128,256	2,277,827
Total		61,132				465,000	1,976,098
Northampton & Bath R. R.	1920					-73,109	-135,691
Do.	1921					-10,732	-146,322
Do.	1922	12,670				8,849	37,10
Do.	1923	20,045				47,188	84,377
Do.	1924	6,638				33,469	117,768
Do.	1925	18,933				56,262	174,061
Do.	1926	10,564				46,840	220,949
Do.	1927	9,810				52,843	272,693
Do.	1928					45,827	319,083
Do.	1929					33,818	352,905
Do.	1930					33,378	386,221
Total		78,660					274,633
Union Railroad (Pittsburgh, Pa.)	1920					91,246	6,806,837
Do.	1921					1,050,747	7,312,015
Do.	1922	915,072		10	500,000	2,567,558	9,429,368
Do.	1923	780,635		15	750,000	2,428,483	10,843,334
Do.	1924			10	500,000	479,064	10,834,079
Do.	1925	316,357		15	750,000	1,808,305	11,889,505
Do.	1926	378,295		20	1,000,000	1,862,782	12,705,529
Do.	1927			20	1,000,000	926,033	12,574,829
Do.	1928	557,731		25	1,250,000	2,359,734	13,603,817
Do.	1929	866,136		25	1,250,000	2,964,247	15,303,929
Do.	1930			15	750,000	1,133,331	15,609,363
Total		3,814,226				8,750,000	17,971,550
Youngstown & Northern Ry.	1920					-26,471	-78,917
Do.	1921					-5,971	-84,888
Do.	1922	12,815				61,745	-23,142
Do.	1923					4,439	-18,703
Do.	1924					14,396	-4,155
Do.	1925					43,216	38,937
Do.	1926	9,815				36,983	69,882
Do.	1927					8,560	78,422
Do.	1928					20,846	98,981
Do.	1929					-7,727	91,213
Do.	1930					-36,917	49,889
Total		22,630				113,069	
Total above roads		52,258,640				84,947,625	173,174,155

Selected income and balance sheet items, Class I Roads 1920-1930 Delaware, Lackawanna & Western Railroad Co.

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920	\$8,444,110	Common, 20	\$5,128,434	\$42,220,550	\$14,059,700	33.30
1921	55,731,126	Common, 12 1/2	13,284,431	84,441,100	18,868,299	22.34
1922	10,132,932	Common, 12	6,941,636	84,441,100	6,328,887	7.50
1923	10,132,932	do.	13,742,969	84,441,100	12,540,560	14.85
1924	11,821,754	Common, 14	15,925,962	84,441,100	14,697,007	17.41
1925	11,821,754	do.	14,933,998	84,441,100	14,286,599	16.92
1926	11,821,754	do.	19,331,910	84,441,100	17,868,238	21.16
1927	71,453,602	Common, 84.62	17,398,099	84,441,100	15,707,772	18.60
1928	11,821,754	Common, 14	17,119,225	84,441,100	13,129,541	15.55
1929	11,821,759	do.	17,508,587	84,441,200	13,340,130	15.80
1930	10,132,944	Common, 12	11,159,923	84,441,200	6,082,575	7.20

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$11,159,923	\$2,741,545	\$13,901,468	\$7,818,893	1.78
1931	7,241,204	1,928,434	9,169,638	8,078,948	1.14

<sup>1</sup> Includes 100 per cent stock dividend amounting to \$42,220,550.

<sup>2</sup> Includes \$59,631,848, value of Glen Alden Coal Co. bonds, and interest thereon, transferred to the Lackawanna Securities Co. in consideration for which the latter company issued its capital stock to the stockholders of respondent, in the ratio of 1 share of Lackawanna Security Co.'s stock, for each 2 shares of respondent's stock.

#### TOTAL CORPORATE SURPLUS

Year 1920	\$197,834,912
Year 1929	80,539,406
Year 1930	75,651,656

#### Denver & Rio Grande Western Railroad Co.<sup>1</sup>

Year	Dividends declared		Net railway operating income	Total capital stock	Net income	Per cent of net income of capital stock
	Amount	Rate, per cent				
Dec. 31—						
1920			\$6,348,452	\$87,775,670	\$1,915,632	2.18
1921			3,409,353	57,988,582	5,773,655	
1922			5,558,452	57,988,582	968,497	
1923			8,231,816	57,988,582	2,854,910	
1924			2,785,083	75,883,386	3,604,719	
1925			6,758,785	88,221,939	3,161,066	3.58
1926			7,609,801	88,671,139	4,055,167	4.57
1927			6,391,040	88,744,339	2,775,886	3.13
1928			7,094,772	88,797,639	3,444,382	3.88
1929			8,528,676	78,835,539	3,554,635	4.51
1930			6,940,942	78,865,940	1,684,281	2.14

Year	Net railway operating income	Other income (accounts 509-519, inclusive, plus miscellaneous operating income)	Total income	Fixed charges (accounts 542-551, inclusive)	Ratio of total income to fixed charges
1930	\$6,940,942	\$298,858	\$7,239,800	\$5,555,519	1.30
1931	5,137,991	187,606	5,325,597	5,550,955	.96

<sup>1</sup> Represents returns of the Denver & Rio Grande Railroad Co. to July 31, 1921, and its successor the Denver & Rio Grande Western Railroad Co. subsequent thereto.

#### TOTAL CORPORATE SURPLUS

Year 1920	\$15,301,247
Year 1929	14,408,130
Year 1930	15,786,307

Commissioner EASTMAN. The question was asked, I think, by Congressman Mapes, as to how long a time it would take to complete the recapture work, down through the close of the year 1930.

Our bureau of valuation estimates that the time required would be up to July 1, 1935.

They divided that into three periods based on their present program, and figured that a liability now estimated at \$83,016,610 could be determined by December 31, 1932; that a further liability now estimated at \$139,218,769 could be determined by the end of 1933; and that the remaining amount, estimated at \$143,522,360, could be determined by July 1, 1935.

That is without allowing for any litigation in the courts.

Mr. MAPES. May I ask you there, Mr. Commissioner, if that will be the time when your estimated earnings of excess income would be converted into actual findings by the commission of excess income?

Commissioner EASTMAN. Yes; it covers the time required to make our final reports definitely finding the amounts due, subject to possible litigation in the courts.

Mr. MAPES. But that would be the ultimate finding of the commission of the excess?

Commissioner EASTMAN. Yes. Now, I think this estimate has been carefully prepared, but my experience with estimates of this sort is that they are liable to be exceeded, because you can never tell what contingencies are going to arise in the course of the work.

Mr. MAPES. Taking an individual road, from year to year, when does it know when you make an estimate of the excess income?

Commissioner EASTMAN. We do not give the roads any information as to our estimates. I judge from Mr. Fulbright's testimony and Colonel Thom's testimony and perhaps Mr. Cain's testimony, that some information of that kind has leaked out; but it was never given out officially, and it was not the desire of the commission that it should become public property.

Mr. MAPES. What I mean is, perhaps I do not make myself clear, take for example the Pennsylvania, or the Nickel Plate, or any other road, if it has an excess earning in 1924, when would it know that the commission was going to ask it to pay one-half of the excess?

Commissioner EASTMAN. Under our present procedure, the first information that it would have of a legal, formal character would be when a tentative report of division 1 is served upon it. That tentative report is final, unless a protest is filed. If a protest is filed, then the matter is set for public hearing.

Mr. MAPES. There has been testimony here that the roads could not provide or lay aside the amount of their excess earnings with any degree of certainty because they did not know when they were going to be called upon to pay the excess for perhaps years after the earning year and after the excess earnings had been used up in some other way.

What is there to that?

Commissioner EASTMAN. Well, they do not receive any final notice, or notification of the findings of the commission until this tentative report is served, and then, after that, if a protest is filed, not until the final report is served following those hearings. They do receive each year an order which calls upon them to report what their excess income is, and to pay over what they confess to be their excess income. That is what that order and that report amount to.

Mr. MAPES. As a practical matter, is it very difficult for the roads to tell now approximately whether they will be called upon to pay?

Commissioner EASTMAN. Well, I think probably most of them, by now, have a pretty good idea of what our valuation is likely to be and whether they are liable to be called on, and the approximate figure; but you must bear in mind that none of them is willing to admit that our valuation is the real value, and that they have carried their protests to the courts, and will continue to do so.

Mr. MAPES. There has been some emphasis placed here, during the hearings, upon the difficulty of making a revaluation every year, even after the one valuation has been completed by the commission. How difficult is it for the commission to bring the valuations down to date from year to year after it has once been made?

Commissioner EASTMAN. Commissioner Lewis is going to come up here to discuss 19a, and, as the Bureau of Valuation is in his charge, he can answer that probably better than I can. My own understanding of that situation is this, that in order to determine the valuation each year we must follow the changes in the inventory first. We must know what changes there have been in the physical property, but after that has been done, we have got also to know what the level of unit prices is in the case of each class of property for the year that we are working on, notwithstanding what it may have been in the previous year. It is the current level of prices which we must apply in ascertaining reproduction cost new. In addition to that, we must know what changes there have been in the value of the railroad land, determined by ascertaining the changes in the values of adjoining property. We must also know what the situation in the particular year is with respect to the depreciation of the property.

Now, those are matters which can not be determined by mere inspection of accounts, but to some extent, require field investigations. In case of unit prices, I may say that we have a very elaborate organization at the present time which follows that matter very carefully. I think all of the important contracts for construction that the railroads enter into are on file in the Bureau of Valuation. We know just what they are paying for their construction work, and just what they are paying for their supplies and equipment; but those costs are shifting all of the time. Each year you have to apply a new set of prices. You may have to apply new land values. You may have to adjust your depreciation. That is my understanding.

Mr. MAPES. While we are on that general subject, I would like to ask you this question: It has been urged here that the entire valuation provision of the law ought to be repealed; that it has served its usefulness and there is no longer any public need for it.

What is your judgment about that?

Commissioner EASTMAN. That is the particular matter which Commissioner Lewis is going to discuss. I would rather let him do that than attempt to do it myself, because I know he can do it much better than I can.

Now, in connection with this estimate from our bureau, the statement is made that it is to be expected that some of the commission's orders will be contested in the courts, but that substantially all of the important questions of principle should be determined in two or three test cases. Personally, I think that is unduly optimistic. If I am anything of a prophet at all, I should be very much surprised

if that should be the case. Mr. Benton covered that very fully and I thought very well in his testimony before the committee, and pointed out to you the myriad of legal questions which it is possible to raise in these valuation cases.

Mr. MAPES. You entertain the same anxiety that was expressed by Mr. Benton of the possibility or probability of rulings being laid down by the courts in regard to valuation that will work to the detriment of the public, if the recapture clause is not repealed?

Commissioner EASTMAN. I do. I have so expressed myself. I think it is a very unfavorable atmosphere in which to determine those questions, which affects not only the regulation of the railroads, but affect much more, perhaps, the regulation of all public utilities throughout the country, by the State commissions as well as by the Interstate Commerce Commission. Without intending to reflect on the courts at all, I am apprehensive as to the rulings which may be made on those questions in cases where the issue is as to whether a certain amount of cash shall be taken from a company, and from a company which perhaps under present conditions is very ill prepared to pay it.

Mr. MAPES. You also go along with him on this, would you, that it would be better—I do not know that I can state it exactly as his statement was, but it was something to the effect that it would be better not to repeal the law at all than not to repeal the retroactive feature of it?

Commissioner EASTMAN. I feel this, and I think I so expressed myself in my original testimony, that from now on until conditions change, there is likely to be very little to recapture, so that from that point of view you can not change the situation very much by repealing the law. The cloud which hangs over the railroads at the present time, so far as recapture is concerned, is the cloud which has arisen in the past, rather than the cloud which can be foreseen in the future.

Mr. MAPES. It is your recommendation without qualification, that the law be repealed retroactively?

Commissioner EASTMAN. I am going to discuss that very point in the light of what has been said before the committee. Before I do that, however, I want to take up one other point.

Mr. NELSON. Mr. Chairman, there is one thing that I did not understand.

The CHAIRMAN. Mr. Nelson.

Mr. NELSON. I understand that you are apprehensive as to certain matters in connection with valuation, that if they are taken to the Supreme Court, that the Supreme Court may make a ruling that will perhaps affect your commission in its operation and affect some of the State commissions.

Commissioner EASTMAN. Well, I think that the matter of valuation, so far as the courts are concerned, is still in a great deal of uncertainty. There are many questions yet to be determined, and I think it is unfortunate that those matters which are yet to be determined should be brought up in cases of this kind where there is an atmosphere or circumstances which are likely to have a wholly unconscious but unfavorable influence upon the mental attitude of the court. Perhaps I am unduly apprehensive in regard to that.

Mr. NELSON. Of course, any protection that may result from an opinion of the Supreme Court ought to accrue to those to whom it

is due, whether it is the Federal Government that takes the case up or a railroad corporation.

Commissioner EASTMAN. Those are questions that will come up in the courts from time to time. That is probable. But I think that they will come up under peculiarly unfavorable circumstances if they come up in a recapture case.

Mr. NELSON. On the other hand, in matters of that import, would you not be liable to get a better considered opinion from the Supreme Court if you took it up than if it were taken up by some State commission?

Commissioner EASTMAN. You mean that the case would be better tried?

Mr. NELSON. Would it not be better tried and more carefully considered if it were upon matters which touched upon so important a proposition?

Commissioner EASTMAN. Well, I would not think that that was necessarily so, because some of the States are exceedingly well equipped to handle those matters and have very able counsel to advise them and appear before the court.

Mr. NELSON. I can not see much sense in trying to dodge the law of the country. If we assume that the Supreme Court's judgment is sound, whoever it may find for ought to have the benefit. I do not see anything in favor of avoiding issues.

Commissioner EASTMAN. I do not think that it is a matter of controlling weight in the determination of whether the recapture provision ought to be repealed. I think that it is entitled to weight, but I would not give it controlling weight.

Mr. NELSON. We can not get away from the necessity of having valuations, however much we may want to, or whatever we may desire to do about it.

Commissioner EASTMAN. No, although I think in the future it is likely to come up to a less serious extent than it has in the past.

Mr. NELSON. The correctness of any valuation of any road under your control is liable to come up at any time, is it not?

Commissioner EASTMAN. It can, theoretically. As a practical matter, I do not think that it is likely to. Theoretically it can.

Mr. NELSON. But, if any road under your control is contesting a case, they could bring up that matter of proper valuation, could they not?

Commissioner EASTMAN. They could.

Mr. NELSON. Well, then, we would need these valuations in the final analysis.

Commissioner EASTMAN. There have been very few, if any, cases in the past where individual roads have gone into court and claimed that they were receiving less than a fair return on the value of their property because of our regulation.

Mr. NELSON. Yes; but that is their last resort, if they maintain that a rate is confiscatory and that it does not bring in a fair return.

Commissioner EASTMAN. That is their last resort, but one of the reasons, perhaps, why they do not do it is because the railroad situation is quite unlike the public-utility situation in this respect, that there is very much more competition than there is in the case of public utilities.



Mr. NELSON. As long as they are entitled to that constitutional protection you might be called upon to defend a decision because of the claim that it is not bringing a fair return on a fair valuation I do not understand how you can ever neglect the matter of valuations. I do not see why your commission does not have to have that information available, and why it is not essential to be able to find that valuation at any time.

Commissioner EASTMAN. That is precisely the position that Commissioner Lewis is going to take on behalf of the commission when he appears here, that the commission should be protected in that matter, and prepared to present adequate defenses if the necessity arises.

Mr. NELSON. I do not see how we can safely get along any other way.

Commissioner EASTMAN. I now want to say something in regard to this possibility of litigation of my doubt that the bureau is right in thinking that substantially all important questions of principle are going to be determined in two or three test cases.

The fact is that there are tremendous discrepancies between the claims of the carriers and our own findings. Take the Richmond, Fredericksburg & Potomac case as an illustration—for the year ending December 31, 1923, that carrier claimed a value of \$62,359,946. Our finding of value for that year was \$30,100,000, in other words, less than half of what they claimed.

Now, the carrier's estimate of value is made up of a large number of items, and each one furnishes the foundation for a lawsuit, and in many instances, a good many different lawsuits. Among other things included in that value which they arrived at, was \$9,294,391 for "going concern value as measured by cost of development." No one that has not had experience in valuation, I think, can realize the possibilities in the way of claims which can be advanced, and the possibilities in the way of claims which you can get supported by so-called expert testimony. They mount up into huge figures, and the difference between our findings and the railroads' claims is well illustrated by the information I have given you in regard to this particular case.

Furthermore, in regard to the amount of probable litigation, I think it is the tendency of the Supreme Court, particularly in valuation cases, not to decide any more than it has to decide. When an issue is presented to it which may embrace a large number of points upon which defenses of the carrier are based, if the court's finding is that the commission is in error as to one of those points, it is likely to send the case back to the commission without having decided the other points. That happened, of course, in the O'Fallon case, where the court merely decided that we had not given due consideration to the element of reproduction costs.

Take the recent grain case. There, our interpretation of section 15a was in issue. The court decided that case on the ground that we had not reopened the case for further hearing to develop present economic conditions, and all of the other issues which had been raised and thoroughly argued, and argued to a much greater extent than the issue on which the case was decided, were left for future determination. That is always likely to happen.

I do not blame the court for that. I think that I would do the same thing, if I were in their place—that I would decide no more than is necessary. But the fact that that is done, of course, increases the opportunity for litigation in the future, and decreases the likelihood that you will get through with it with any one case or perhaps any two or three test cases.

Now, Mr. Chairman, I have finished with the particular detailed information that I wanted to bring to your attention. I have gone over the testimony in the hearings which you have been holding since I first appeared, and I have just one or two matters which I would like to comment on, but if it is near the time to close, perhaps you would rather close now.

The CHAIRMAN. I am sure that the committee will want you again to-morrow and suppose that we go on with that statement to-morrow, and close right here.

Commissioner EASTMAN. All right; that would suit me better.

(Thereupon, at 11.40 o'clock a. m., the committee adjourned, to meet the following morning, Wednesday, February 10, 1932, at 10 o'clock a. m.)

## RAILROAD LEGISLATION

WEDNESDAY, FEBRUARY 10, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

(The committee met at 10 o'clock a. m., Hon. Sam Rayburn, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

You may proceed, Mr. Eastman.

### STATEMENT OF HON. JOSEPH B. EASTMAN, COMMISSIONER, INTERSTATE COMMERCE COMMISSION—Resumed

Commissioner EASTMAN. Mr. Chairman, I think I said yesterday that I had had an opportunity to read the record of the testimony of the other witnesses. That is true, with the exception of the testimony of Colonel Thom, given last Friday. I have not had an opportunity to read that. In going over the testimony, I discovered a good many matters which might call for comment or correction of statements, but I do not want to burden you with anything which is not of importance, and it seemed to me that the essential questions in controversy in regard to which I might make some additional comment were three: First, the subject of retroactive repeal of recapture; second, the matter of the rate-making rule of H. R. 7117, and finally, I would like to say something, if I have time, about the rate base in H. R. 7116. If it is your pleasure, I will take up those matters in order, and first say something about the retroactive repeal of recapture.

Now, there has been a good deal of discussion in the hearings as to whether the excess income has been impressed with a trust, and whether the Congress has a moral and an equitable right to cease collecting what is due under the present law, and to return what has already been paid in under that law.

Now, on that legal question I do not think that my opinion is of any great value, and it has been fully discussed by men who are better lawyers than I am. I can tell you, however, how that question appeals to me. It seems to me that if a trust has been created, there are no beneficiaries except the peoples of the United States whom Congress represents. The only other possible beneficiaries are the weak lines, and so far as they are concerned, they state that they do not desire to benefit from the trust, do not believe they would benefit in any event, and ask for the repeal of the existing provisions.

It seems to me that there can be no legal question as to the power of Congress to undo what it has done with respect to these matters,

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or take any other steps that may be desirable in the premises, and that the sole question which the committee has to face is the broad question of whether retroactive repeal of those provisions, including return of the funds which have been paid in, is in the public interest.

Now, if that is in the public interest, I think you ought to do it. If it is not in the public interest, if you are not convinced that it is, then, of course, you ought not to do it.

Taking up that broad question, in the first place it seems to me that the existing section 15a was founded on what we have learned by experience to be an erroneous theory and that the recapture provisions, in their present form at least, are tied up with and dependent upon that theory. The theory was that rates could be so adjusted—the freight rates charged by the railroads—so moved up and down as to maintain a stable level of earnings. Well, that theory disregarded economic conditions and the violent fluctuations in traffic and earnings which are caused thereby. It disregarded the contingencies such as were predicted by this committee in its report in 1919, and the commission is of the opinion, and it seems now to be a quite generally held opinion, that rates ought to be maintained on a more nearly stable basis, that the carriers ought to be allowed to earn excess income when times are good and traffic is heavy and allow that excess to balance inevitable deficiencies in times when business is bad and traffic is light.

It seems utterly unfair, therefore, if a carrier has earned excess income in one or two or a few years out of the entire period, in certain years when there was good traffic, to penalize it and leave out of consideration entirely the years when earnings have been, or will be, deficient. Moreover, to attempt to enforce such claims upon carriers which are now poverty stricken, as many of them which are in the recapture list are at the present time, would add to the present demoralization and strike a further blow at the general economic situation of the country at the present time.

It follows from that that it is neither fair nor in the public interest to attempt to enforce the recapture claims on the present 1-year base, which the law now provides.

Now there is a debatable alternative to that, and that is to average the period as a whole. Undoubtedly that would be a great improvement over the present 1-year basis in the law. It would eliminate a great many carriers and would reduce the remaining claims. Just what the effect would be and what carriers would remain in the list, it is difficult to say. I perhaps should add, at this point, that as to how much that would reduce the work of the commission is debatable, because it would impose certain additional work which is not now imposed. In other words, it would be necessary for the commission not only to ascertain the excess in every year, when there was an excess, but also to ascertain with equal precision, the deficiency in every year when there was a deficiency, in order to determine the average result. That would, in the case of a good many carriers, increase the work imposed on the commission. Of course, there would be certain carriers that could be eliminated by inspection of returns. We would be reasonably certain that they would be excluded. But, wherever there was doubt about it, it would be necessary to make a detailed investigation for each and every year.

Now, I have said that I am going to have our bureau of valuation ascertain what information they can give upon that point, as to what

carriers would remain in the list if it was placed upon the basis of an average net result for the entire period.

I do not know as yet what information they will be able to assemble in that respect. The information which they can assemble will, I think, have to be confined to the period ending December 31, 1930, owing to the difficulty of making an ascertainment with respect to the more recent period of 1931. Of course, if you should add 1931, that would eliminate more carriers. If you should add 1932 also, still more would be eliminated, and probably, or possibly, if 1933 were added still more would be eliminated.

You can, however, get some line on the carriers which would remain by ascertaining what carriers show excess income for each year or nearly every year of the period. I happen to have before me some information which was obtained because of questions which were asked during the course of Mr. Fulbright's testimony with respect to the Nickel Plate. It shows, in the case of that road, that we estimate an excess income for each and every year from 1920 down to and including 1929; but not for 1930. However, it is unlikely that the deficit in 1930 would offset the excess income in the other years. So that, even if the period were averaged as a whole, it is probable that the Nickel Plate would remain in the list.

It is also probable that the larger steel roads would remain in the list and also the coal roads in the Pocahontas region.

I think it not unlikely that most of the carriers for which large amounts are shown in our list would remain, such as, for example, the Frisco, for which we estimate something like \$19,000,000 excess income.

Now, so far as the Nickel Plate is concerned, the bonds of that road are now selling at less than 50 and the preferred stock is selling around 10. In other words, the securities are on nearly a receivership basis. A claim for \$8,000,000 against that road, if it could be made at the present time, would probably have the effect of adding the straw which would drive that road into receivers' hands. However, I would like to discuss—

Mr. HUDDLESTON. May I ask a question there?

The CHAIRMAN. Mr. Huddleston.

Mr. HUDDLESTON. Is that low market price of securities based wholly on earnings or some other factor?

Commissioner EASTMAN. I should say it was based on earnings. As I understand it, the market prices are based on the expectations of investors as to what the future earnings are likely to be, and they derive that information very largely from the present earnings.

Mr. HUDDLESTON. I was wondering whether there had been such a falling off in earnings as to warrant such low prices for securities.

Commissioner EASTMAN. Well, I do not have the earnings of the Nickel Plate before me.

Mr. HUDDLESTON. You mean that particular road?

Commissioner EASTMAN. Yes, sir.

Mr. HUDDLESTON. It occurred to me that there are factors that have to do with the market price of securities other than values and earnings, such as speculation and other things.

Commissioner EASTMAN. Well, in the case of the Nickel Plate bonds, I should assume that it would be found—and I will try to obtain that information for that road for 1931—that in 1931 that road has fallen short of earning its fixed charges, or is very close to



that situation. It may be that that is in the data which I gave you yesterday. I will endeavor to look that up. But, I think undoubtedly that is the case, and that would account for the decrease of value of the bonds.

Mr. HUDDLESTON. I noticed last night that the price of Southern common was 9. Southern preferred was selling at 12 $\frac{1}{4}$ ; Southern 4's of 56 were selling at 48, and yet the statement on earnings that we had here before us yesterday did not seem to warrant the fear of bankruptcy which that price of securities would indicate.

I am wondering just what relation the present stock and bond prices have to actual conditions.

Commissioner EASTMAN. Well, the figures which I have here for the Nickel Plate, which I find in the statement which I gave you yesterday, show that in 1931 the income of the Nickel Plate was \$7,823,320, whereas the fixed charges were \$7,843,500. In other words, that road did not quite earn its fixed charges in 1931.

Now, the year 1932 is starting off even worse than 1931. The car loadings for January are materially under the car loadings for January of 1931, and I suppose that fact, coupled with the inability to earn fixed charges fully in 1931, would account for the market values of the Nickel Plate securities.

Now, in the case of the Southern, the information which I furnished you yesterday shows that the total income of the Southern in 1931 was \$11,481,703, and the fixed charges \$17,411,185. In other words, the total income was only 66 per cent of fixed charges. That would, I think, account for the market values of the Southern securities, and the Southern, by the way, is a road which is on the list which I gave you yesterday, and has a total estimated recapture liability of \$15,838,881.

If we were in position to attempt to enforce that claim against the Southern at the present time, it is obvious there would be no way in which it could get the money, except from a loan from the Reconstruction Finance Corporation, if that corporation would make the loan.

The same thing would be true of the Frisco, which has a total estimated recapture liability of \$19,556,512, and of the Nickel Plate, which has an estimated liability of \$8,817,555.

However, I should like to discuss the situation from the standpoint of the roads controlled by the United States Steel Corporation, and the coal roads in the Pocahontas region, because it seems to me that if a case for recapture can be made at all, it can be made in the case of those roads.

The argument for recapture of the excess is much stronger in the case of those roads than in the case of any of the others. Now, so far as the roads controlled by the United States Steel Corporation is concerned, I have no argument to offer against recapture. As I said in my original statement, if those roads could be segregated and dealt with alone, I would be disposed to agree that you should not repeal the recapture provisions; but I do not see how it is possible to deal with them alone. All roads must be dealt with on the basis of some rule of general application, and any rule of general application which would catch those roads would catch others.

Now, I would like to discuss the situation of the Pocahontas coal roads. Those roads are dependent largely upon one particular commodity, and that is coal. Eighty per cent of their tonnage consists

of coal. That alone introduces an element of hazard, so far as a railroad is concerned—being dependent for its traffic largely or almost exclusively upon one particular commodity. There were many years in the past when those roads were not prosperous. The prosperity of the Norfolk & Western seems to date from about 1912, and the prosperity of the Chesapeake & Ohio from a later date than that. If you go back beyond that time, they were not prosperous. If they paid dividends at all, they were small dividends.

Now, the reason why they are prosperous, or have been prosperous during recent years, is because of the unusual demand for the coal produced in the territory which they serve. That demand has been due to the fact that it is good coal, that the mines are largely new and mining conditions are favorable, and also that labor conditions from the standpoint of cost of operation have been relatively favorable.

Furthermore, those lines are able to concentrate their tonnage. A very large part of it goes almost downhill to Hampton Roads, where it is distributed by vessels to other parts of the Atlantic coast, or goes abroad. Another large part of it moves in concentrated form to the Lake Erie ports. In other words, those roads are able to handle their coal tonnage on a more economical basis than other roads, which have a much more diffused coal traffic.

Now, present coal conditions are such that it seems to me by no means certain that the situation of those roads is liable to be as favorable in the future as it has been in the past. I was very much impressed by the evidence with respect to the coal situation which was presented to the commission in the Fifteen Per Cent case. The demand for coal has been greatly curtailed. That is due to the fact that very important economies in the consumption of coal have been introduced in recent years. It is also faced by the keen competition from natural gas and fuel oil. In addition to that, it is faced by the construction of centralized electric power stations, which locate at strategic points where the haul of the coal is short and then distribute electric power from those stations producing that power with extreme economy in the consumption of coal. I understand some of those plants can produce a unit of electricity now with about one-fifth of the coal that they used to use in previous years.

Now, under those circumstances, the situation of the coal industry, as I think you all know, is precarious. It is faced by intense competition and discouraging conditions.

Furthermore, coal prices in comparison with the freight rates on coal are relatively very low. In other words, while the freight rates have remained constant, or have been slightly increased, the price of coal has been going down. Under those circumstances, I think it is almost inevitable that there will come a demand for a reduction in the rates on coal, and I understand that demand has already come and is being made on these very roads in the Pocahontas region. At the present time the Chesapeake & Ohio stock is selling below par, selling at about 21, I think, which on the base of 100 par is about 84. It is \$25 par stock, I think. Norfolk & Western stock is selling at about 117.

There is a further special effect which the enforcement of recapture at this time would have upon the Chesapeake & Ohio. That road, as I think I said in my former statement, is the back bone or corner stone of the Van Sweringen system. I have no brief for that

system. I have been, on the whole, one of its critics, in the past. The resources of the Chesapeake & Ohio have been very largely used to put that system together, and it has been a heavy drain on that road.

If we were able to enforce at the present time a recaptured claim of \$47,000,000 against the Chesapeake & Ohio, there is no way in which it could produce the cash except by the issuance of bonds, which, as Colonel Thom has pointed out, would mean an increase in the funded indebtedness without any increase in assets, and it seems to me clear that that would have a very disturbing, if not disastrous, effect upon the whole Van Sweringen system of railroads. It might be the last straw, so far as the Alleghany Corporation is concerned.

As I say, I am not a defender of the Van Sweringen system, or the way in which it was put together. Nevertheless, such effects as that, in times like these, must be given consideration.

I think this also should be said, and that is, that I am not at all certain that it is a bad thing for the country that certain railroads should be able to earn more than ordinarily generous returns. I say that because of the hazards which have become so clearly manifest in recent times. Where a large element of hazard exists, that ought to be offset by the opportunity to secure more than ordinary profits in exceptional cases. So long as that opportunity is open, investors will more readily go into the enterprises than if no such opportunity exists.

If you should go on with the attempt to recover this recapturable income, but averaging the period as a whole, you do not know as yet what railroads you would strike, but it is probable that you would strike certain of the weak roads and have an unfortunate effect on some that are strong. The litigation would undoubtedly remain, and while that may not be the most important factor, I think it is something to be given considerable weight. Moreover, when you got through you would have a relatively small amount of money. Just how large it would be, after the courts got through with the decisions of the commission, I do not know. But, I think it would not, in any event, especially if you included the years 1931 and 1932, be very large, and under the present law it would be an amount of money for which there would be no particular use, and from which the weak lines, for whose benefit the recapture provisions were very largely created, say that they have very little hope of benefitting.

The railroad situation at the present time seems to me extremely critical. I believe that it can be pulled out, but that everybody will have to pull together in order to do that, and my own conclusion, and that is also the conclusion of the commission, is that these recapture provisions throw an unnecessary cloud on the situation and that the possible advantages are much more than offset by the risks involved. In other words, that the game is, on the whole, not worth the candle. It is our opinion that it is not in the public interest to attempt to proceed with the enforcement of these recapture provisions.

Now, I would like to turn to the question of H. R. 7116, and the rule of rate making.

Colonel Thom, in his testimony, made this statement:

Commissioner Eastman has come here and testified that the rates that the carriers have been operating on have not been affected by section 15a, but were made from considerations which would be applicable independent of section 15a.

Now, whether or not that is a correct statement depends on how it is interpreted. I did say, I think, that much the same rates would, in my opinion, have been made if section 15a had not been enacted. I did not intend to convey the impression that the commission has not had fully in mind the duty under the law of making rates, so far as practicable, which would produce the stipulated return. Certainly, we had that in mind in 1920, when we authorized the increases then, and I have explained to you the situation which thereafter arose in 1921, because of depressed business conditions and consequent decrease in traffic, and the widespread feeling in the country that the existing rates were too high.

When we made that decrease, in 1921, we did not overlook the matter of return on fair value, but we felt, rightly or wrongly, that the decrease which we required would have a favorable effect, and that the railroads would gradually get back through improved traffic conditions to better returns.

Now, that is precisely what happened. Whether or not it was a coincidence, the earnings did thereafter improve rapidly, and I have explained to you that in the East and the South they were so good that in view of the fact that traffic was continually increasing and expenses were continually being reduced, there seemed no occasion to disturb the situation by proposing any further increases in rates.

In the West we had a different situation. The earnings were low there, but when that was analyzed the trouble was discovered to be mainly in the western trunk-line region and in the northwestern region. The situation was reasonably good in the Southwest and so far as the other transcontinental lines were concerned. The commission conceded the need for additional revenue for the western trunk-line territory, but was unwilling to approve a horizontal increase in all rates. It directed the attention of the railroads to the desirability of selecting for increases the particular rates which were low and which ought to be increased.

Furthermore, all through that period there existed the incalculable effect of the continuing passenger slump. If it had not been for that continual slump in passenger earnings, I think without doubt that the freight rates would have produced the stipulated return; and in some years, on the basis of our estimates of value, they did produce that return in both the South and the East.

Now, in 1931 the situation was that the railroads conceded that they could not obtain the stipulated return under any rates, and that we were convinced by the evidence that the 15 per cent increase would not have a favorable effect upon the earnings.

I make that statement merely so that it will not be thought that the commission has disregarded its duty under the law of attempting to keep revenue at a point which would produce the stipulated return.

Now, the particular question which seems to arise with respect to H. R. 7116, is this, whether there is danger in specifying the particular matters which are set forth in paragraph 2, to be considered by the commission in fixing the rate level.

Mr. HUDDLESTON. May I interrupt you at that juncture.

Commissioner EASTMAN. Yes.

Mr. HUDDLESTON. Section 15a has had no defenders before this committee. Everybody has washed his hands of it. Apparently we are to blame it on Mr. Warfield and Senator Cummins both of whom

are dead, and probably if they were here, they would have alibis also.

One of its faults was in pointing to the fair-return element, and so on. Why carry over into a new law similar provisions? Why not wipe out section 15a and return to just and reasonable rates and have the commission to consider all that is fair and legitimate for and what is a just and reasonable rate as determined by all proper and legal factors?

Commissioner EASTMAN. That is precisely the question that I was about to start to answer. It seemed to me to be the question which stood out in the hearings, and which I felt that I ought to answer if I could, and I put it this way: Is there a disadvantage in specifying certain particular matters which are set forth in paragraph 2 of H. R. 7117 to be considered by the commission in fixing the rate level? Is there overemphasis on certain matters, which would involve public danger? Now, it seems to me that the necessity of securing revenues so that capital will be attracted to the railroad industry is a central and cardinal fact under private ownership of railroads. It is not a fact which involves investors alone. The public, it seems to me, is just as much interested as investors are, because private capital must be attracted if you are going to have good service, and good service is just as important to the public as reasonable rates. In other words, provision for the necessities of the railroads in the present and in the future is a matter which concerns the public and the shippers just as much as it concerns the investors.

Now, if just and reasonable rates will not attract private capital to the railroads, then it seems to me that public ownership is the only answer, and even then, my view would be that the railroads ought to pay their way. I should think that it would be distinctly unfortunate to have any system of public ownership under which the railroads would be carried in part by taxation. Any industry which is taken over by the Government, and publicly operated, ought to pay its own way, and ought not to be a burden upon the taxpayers, so that we get right back to the question, even if you have public ownership, of the necessity of securing earnings which will support the industry.

It seems to me that is a central and a cardinal fact and an economic necessity for a sound railroad system.

Now, you may assume that the commission would be guided by this necessity, if directed to fix only just and reasonable rates, and I think that would be a fair assumption. I believe it would be. I would feel it necessary to take that into consideration myself, and I think the other commissioners would also. Nevertheless, the commission is a changing body and private capital wishes an assurance that this necessity is recognized by the superior of the commission, namely, by Congress, in view of the fact that the commission is a changing body of that kind.

Now, under the old law, prior to 1920, which only specified that the commission should fix just and reasonable rates, there were many who believed that the commission did not sufficiently recognize that need. I was not a member of it at that time, and I do not know whether or not it did. I think the commissioners tried to recognize this financial necessity, and that is clear from their decisions. However, there was that belief that they did not recognize it, and it is true that in the period prior to Federal control, when it became necessary

for the Government to take over the railroads, their properties had not in many instances, been sufficiently maintained from the standpoint of providing adequate facilities for public service. It was because of the breakdown in the operation of the railroads at that time that they were taken over by the Federal Government.

Mr. HUDDLESTON. Is there any sound way for us to provide for it except on the assumption that the commission will be honest and intelligent, and give due weight to all proper factors?

Commissioner EASTMAN. I see no reason why you should not specify those factors in the law, and I am going to give you my reasons for that in a minute.

Mr. NELSON. You see no objection to what? I did not get that.

Commissioner EASTMAN. It seems to me that it is desirable for Congress to specify its policy in the law, in simple terms, and that it can so word that policy that there will be no danger of undue emphasis.

This matter of attracting capital, it seems to me, is a central and a cardinal need, which ought to be recognized in the law; and I think it ought to be particularly recognized under present conditions.

Now, the circumstances are unusual at the present time, even from the standpoint of panicky, depressed conditions, and they are unusual in this respect, that there is not only disillusion and discouragement on the part of stockholders, but there is disillusion and discouragement on the part of bondholders also. There has been a tremendous recession in the price of the classes of bonds which it is necessary for the railroads to sell if they are to get capital, and of course they can not ultimately go on providing capital by selling bonds alone. If good credit is to be maintained, eventually they must be able to market stock as well. Now, as I said before, it seems to me that the present situation is very critical. I believe that the dangers can be overcome, but it is going to require effort and cooperation on the part of everybody. There are a great many who think, as I think, that the competition of the railroads with each other can and ought to be reduced, that they should cooperate with each other in eliminating expenses caused by undue competition.

I think, also, there are things that can be done by Congress in the way of recognizing the need for regulation of other transportation agencies, but that the situation is critical can not be gainsaid, and there are many reasons for that. You not only have the competition of other forms of transportation, which are developing so rapidly, but you have railroad rates at the present time on comparatively high levels in comparison with commodity prices, and that means an increase in the tendency which has existed in recent years for industries to relocate to such an extent that transportation may be reduced. That may be a good thing for the country, because it tends to spread industry around throughout the country, but nevertheless it does decrease the amount of transportation, and the revenues of the railroads, and the situation is very serious.

If a large number of receiverships should result, I am not sure whether good credit can be restored. Now, in the past, that was overcome. There were receiverships galore following the panic of 1873, and there were also many receiverships following the panic of 1893, but in those days we had a rapidly growing and developing country, had new lands for immigrants and others to occupy; we were receiving immigrants in vast numbers. We are not doing that



now. The country is going to grow, it seems to me, much less rapidly than it has before, and I am inclined to think, rightly or wrongly, that if we have a large number of railroad receiverships at the present time, that is going to be the last straw, so far as credit and private ownership of railroads are concerned.

Now, I am not wedded to that theory myself, but most people are, and I think that situation must be recognized if it is desired that private ownership of railroads be continued.

Mr. HUDDLESTON. May I make this suggestion? You have referred to the undesirability that the courts should operate in an unfavorable atmosphere, in an emergency atmosphere. Do you not think that it is just as undesirable that legislatures should undertake to deal with a measure of permanent application in what we hope is merely an emergency and temporary situation?

Commissioner EASTMAN. I think that it certainly ought to be on guard.

Mr. HUDDLESTON. In a situation which we certainly hope will only be temporary.

Commissioner EASTMAN. I think that it ought to be on guard not to be swept off its feet.

Now, I would like to take up for consideration a proposed substitute for paragraph 2 of H. R. 7117, and I have copies of this for the members of the committee. I would like to analyze and discuss that with you.

(The proposed amendment above referred to is as follows:)

(2) In the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, to the present and prospective needs of the public for adequate and efficient transportation facilities and service, to the effect of rates on the movement of traffic, and to the necessity, in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service and adequate provision for the transportation needs of the public. The fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or reducing rates, as the case may be; but it is hereby declared the duty of the commission to exercise its authority over rates to the end that, so far as practicable, the revenues derived therefrom will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment and over a reasonable period of years, constitute a sufficient basis for the maintenance of a national system of railway transportation at all times adequate to the needs of the public: *Provided*, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

Commissioner EASTMAN. I may say that the chairman of the committee suggested that I submit a proposed amendment.

The CHAIRMAN. That is a substitute for the (2) on page 1, the paragraph down to section 2?

Commissioner EASTMAN. Yes, sir; the paragraph marked (2) beginning on page 1 and ending on line 4 of page 3.

I may say that the chairman of the committee asked me if I would attempt to condense paragraph (2) into the simplest possible terms, and that is what I have tried to do here. Now, in the first place—

The CHAIRMAN. I made this suggestion to the commissioner, that is that it seemed to be the thought of the committee from the questions asked, that they wanted the fewest words and the simplest language that were possible to cover this situation and I therefore sug-

gested to the commissioner that he prepare what he considered the minimum of language that would cover this rate-making provision.

Commissioner EASTMAN. I call your attention to the fact that this starts out with:

In the exercise of its power to prescribe just and reasonable rates.

That is at the very beginning, and if you will examine the interpretation which the commission gave to the same language in the present section 15a in connection with the recent 15 per cent case, and which has been incorporated in the record of these hearings, I think that you will discover that there is no inclination on the part of the commission to overlook or disregard those words, "just and reasonable rates." It has given full weight to them. They are in this provision at the very start.

Now, the second thing:

The commission shall give due consideration, among other things, to the present and prospective needs of the public for adequate and efficient transportation facilities and service.

I may say that the language which I am now discussing is a condensation of that which was offered by Colonel Thom as a suggested amendment. Now, it seems to me clear that that is a matter which ought to be taken into consideration.

Now, the next thing is:

To the effect of rates on the movement of traffic.

That also is a matter which ought to be taken into consideration from the standpoint of the public and the railroads as well.

Further:

And to the necessity, in the public interest, that the carriers furnish transportation service at the lowest rates consistent with adequate service and adequate provision for the transportation needs of the public.

That is from the public point of view also. The public ought to be charged the lowest rates possible that are consistent with the furnishing of what they also need, namely, good service.

Now, the next sentence brings in an idea which is not in the present section 15a, which experience has shown, we believe, ought to be there, and that is:

The fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or reducing rates, as the case may be.

Now, that, we think, ought to be recognized in the law. It is not there now.

Then, it goes on—this is a combination of the provisions in lines 10 to 17, of page 2, and of the lines 1 to 4, on page 3:

But is hereby declared the duty of the commission to exercise its authority over rates to the end that, so far as practicable, the revenues derived therefrom will—

Now, here we put in something which is necessary to the protection of the public—

under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment and over a reasonable period of years, constitute a sufficient basis for the maintenance of a national system of railway transportation at all times adequate to the needs of the public.

Finally, the proviso is added:

*Provided, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.*

I submit that everything which is mentioned is something which is in the public interest. Now, if there is something else which is simple and cardinal and which ought to be specified, it can be included, but it seems to me that this covers the essential matters in a comparatively simple way.

Mr. HUDDLESTON. May I ask what is the general purpose of this section? What do you expect to accomplish by it?

Commissioner EASTMAN. It is a declaration of the policy of Congress. It is a declaration.

Mr. HUDDLESTON. To what end?

Commissioner EASTMAN. To what end?

Mr. HUDDLESTON. Yes.

Commissioner EASTMAN. In order to—

Mr. HUDDLESTON. It is an instruction to the commission?

Commissioner EASTMAN. It is an instruction to the commission as to what Congress feels that it ought to keep in mind in establishing the general rate level.

Mr. HUDDLESTON. Is it to bring about a higher rate level than would otherwise be fixed.

Commissioner EASTMAN. I am not, by any means, certain that that is so. In fact, in view of the provision in here as to the effect of rates on the movement of traffic—my own belief is that we shall not have much question about exorbitant rates for some time to come, and one of the principal questions which the carriers will face is whether or not rates ought not to be reduced in order to secure more revenue.

Mr. HUDDLESTON. This then is not to affect the level of rates?

Commissioner EASTMAN. Well, I think it may affect the level of rates. You can not tell what it will do. It is a statement of the ends which Congress believes that the commission ought to have in mind. Now, how you shall arrive at those ends, depends upon the evidence before you in any particular case. It might have the effect of increasing certain rates; it might, under certain other conditions, have the effect of reducing certain rates. It is not an attempt to instruct the commission to raise rates, or to reduce rates. It is a mere statement of the important ends which Congress believes that the commission ought to have in mind in the regulation of rates.

Mr. HUDDLESTON. Did I understand you correctly to say that without expressing them in the law the commission would have these considerations in mind in fixing a just and reasonable rate?

Commissioner EASTMAN. In my opinion they ought to have them in mind. In acting myself, I would endeavor to keep them in mind. I can not speak for prospective members of the commission. I believe the present commissioners would have them in mind. But, if they are things which ought to be considered, I do not see why they should not be specified in the law by Congress, and I think, particularly in view of present conditions, but even under ordinary conditions, it is desirable to specify them.

Mr. HUDDLESTON. You think it is possible to express in the law all of the considerations that should be borne in mind by the commission?

Commissioner EASTMAN. I do not. I would confine it to central and cardinal principles.

Now, as I say, if they are not all there, if there are others which can be simply expressed, and which are similarly important, they ought to be stated.

This seems to me to cover the ground. Perhaps I am wrong about that.

Mr. HUDDLESTON. May I suggest, merely as a point of view for your consideration, that considerable stress is laid here upon the maintenance of a national system of railway transportation. This latter, I suppose, means the building of new lines where they may be needed.

Commissioner EASTMAN. Well, it means more than that.

Mr. HUDDLESTON. Well, it includes that.

Commissioner EASTMAN. It would include the building of new lines if any were needed. It would also include the provision of proper facilities to furnish service. It is quite likely that under present conditions the railroads may have to modify and change their present facilities in important respects, in order to meet the new demands for service which are brought about by the other competing agencies.

Mr. HUDDLESTON. And that clause applies as to the attraction of capital.

Commissioner EASTMAN. I think they have got to be attractive to capital, if you are going to successfully operate privately owned systems of railroads.

Mr. HUDDLESTON. The clause referring to adequacy of service; adequate service and adequate provision for transportation needs of the public.

It occurs to me that there is a zone of adequacy and that men might differ upon what was adequate; that certain degrees of adequacy would be uneconomic, that people would not be able to pay for—the price of the commodity shipped would not warrant it.

We have, for illustration, certain fast and luxurious passenger trains. They are nothing more than adequate, perhaps. They cost a lot of money, and the railroads lose a lot of money operating them. The probabilities are that one passenger out of a dozen traveling on them really has the pressing need for that kind of service and the other 11 could do just as well on a much lower degree of speed and luxury.

I am brought into uncertainty to know just what the commission will consider to be its duty in that kind of a situation.

Commissioner EASTMAN. Well, I think I perhaps should say this, that there is nothing new about the language as to an adequate transportation system.

Mr. HUDDLESTON. There is nothing new about it.

Commissioner EASTMAN. That is in section 15a at the present time, and I think also in the Hoch-Smith resolution, if I recall that correctly.

Mr. HUDDLESTON. May I claim credit here for having opposed that resolution?

The people need adequate service if they are able to pay for it. The people need adequate highway service. A 40-foot boulevard, and if they are able to pay for it, and the use of the road warrants, so be

it. But if they are only able to pay for an oxcart road winding over a clay hillside, why should they go to the expense of the other road?

Commissioner EASTMAN. You are getting into the realm of definition of words, which is always a very difficult realm to get into.

Mr. HUDDLESTON. I use a great many useless and unnecessary words in conversation, but not when I am writing a law.

Commissioner EASTMAN. My own impression is that there is not any zone of adequacy. A thing is either adequate, or inadequate, one or the other, or more than adequate. The question of what is adequate, however, will always be a question of judgment. I do not think you can get away from that.

Mr. HUDDLESTON. I have in my mind the ability of the user to pay for the service. If he is able to pay for the service he should have adequate service.

Commissioner EASTMAN. I think that I ought to say that, so far as these luxurious passenger trains are concerned, the railroads tell us that those are the trains on which they earn the most money, at the present time. I would not want to see any condition exist under which the railroads would not make their trains attractive, or would quit trying to make their passenger service generally attractive. However, I do not think that rates ought to be established, certainly, with a view to providing extravagant or luxurious forms of service. It does not seem to me that that can be covered in the law. From my point of view, the word "adequate" is just about the best word you can get.

Mr. HUDDLESTON. "Adequate" is not qualified by "reasonably."

Commissioner EASTMAN. Well, I would not object to that.

The CHAIRMAN. Is not this a thought that you could take, "in the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, to the following," which would leave all of these left to the judgment of the commission in the last analysis?

Commissioner EASTMAN. Undoubtedly.

The CHAIRMAN. The matter of adequacy, the matter of building up a national transportation system sufficient to meet the needs of the country. Those are the things that the commission is directed by Congress to give due consideration to.

Commissioner EASTMAN. They are the ends which the Congress thinks are necessary and which it desires the commission to keep in mind continually. Now, the question of how you are going to arrive at those ends is going to be a question of judgment on the evidence. You can not get away from that, it seems to me.

The CHAIRMAN. In other words, any reasonable rule of rate making, the end of it, of course, is the judgment of the commission.

Commissioner EASTMAN. We all hope and believe that the credit of the railroads can be restored; but there certainly is a possibility that, do the best we can, that can not be accomplished. Yet certainly the law ought to specify that that is an end for the commission to have in mind, and keep in mind in its regulation of rates.

The CHAIRMAN. Well, does not the commission take into consideration, or does it, the question of competition? Wasteful competition?

Commissioner EASTMAN. On the part of the carriers, on the part of the railroads?

The CHAIRMAN. Yes. There is certainly such a thing as wasteful competition.

Commissioner EASTMAN. Oh, I think that is very clear that there is, Mr. Chairman, and I have made certain addresses in which I have called attention to that particular matter.

The CHAIRMAN. Do you know anybody that indulges in much more folly than the railroads do when they start out to compete with each other?

Commissioner EASTMAN. Well, I think that in all lines of business, probably, there is a good deal of folly when you get to competition.

The CHAIRMAN. I specifically take this instance. From San Antonio, Fort Worth, and Dallas to St. Louis and Chicago, we have about three railroads running in that direction, from Texas. One of them puts on a de luxe passenger train that would probably take care of all of the people that want to do that fast traveling. Each one of the others puts on from one to two trains.

Now, here is what happened to me during the holidays. I live off of the main line, and I wanted to get on the main line, to come to St. Louis. The M., K., T. is closer to me than any of these other railroads, and I asked that one of their trains be stopped, as I was taking a long journey, and under their regulations they will stop for passengers who are taking a long trip—about 12 miles from my home, and it developed that the M., K., T. Railroad has running out of Texas a fast train at 4.30 for St. Louis, that stops about every 100 miles. That is called the Blue Bonnet, and then there is another one coming out at 8 in the evening, and both of them empty. That is one of the railroads. Those trains are less than four hours apart.

Now, it does seem to me that is a terrific waste. From this little town of Bells, to St. Louis, there were not four people in either one of the Pullmans on the train, and with the Texas special, following three and a half hours later, the same condition existed.

Commissioner EASTMAN. Well, the railroads have pooled their passenger service in two particular cases, one being between Seattle and Portland, and the other between the Twin Cities and Duluth.

My own belief is that there are a great many other instances where they can do likewise to great advantage. I have no doubt that the same thing is true to a considerable extent of the freight service. The railroads now have a small army of solicitors, whose business it is to induce shippers to divert traffic from one railroad to another. Possibly, in certain cases, they may create traffic, but largely speaking their job is to attempt to persuade shippers to divert traffic from one to another, and, often, to persuade them to divert from the direct, economical, short route, to a circuitous and uneconomic route.

The CHAIRMAN. That is the very next question I was going to ask, and you are answering it.

Commissioner EASTMAN. There are many cases where the railroads, in keen competition to secure traffic, provide certain facilities for shippers or give certain allowances to shippers from which they secure—that particular railroad secures a temporary advantage, but the result is that eventually all of the competitors do the same thing, with the net result that they all suffer an added expense without any benefit.

Now, we are investigating, or are about to investigate, a situation of that kind which we believe exists in New York. Of course, I ought not to predict what the conclusions are going to be in that



investigation, but the reason why we are investigating it is because we have reason to believe that the railroads have provided, in the way in which I have spoken of, tremendous warehouse and storage facilities for shippers which they are furnishing to them at rates way below cost, with a net disadvantage to all of the railroads, as well as to those private interests whose sole business it is to provide storage and warehouse facilities.

That is the sort of thing that grows up from competition. One railroad starts it and gets a temporary advantage, but before they get through, they are all doing it, and all suffering disadvantage and gaining no benefit.

I believe such a situation exists throughout the country, that there are many cases of great waste, and that the railroads must correct those situations if they are going to pull out of the present situation. I think that is one of the essential things.

Mr. HOCH. Mr. Chairman.

The CHAIRMAN. Mr. Hoch.

Mr. HOCH. Mr. Commissioner, various spokesmen for shippers' organizations have at different times in connection with rate cases urged the necessity on the commission of considering the value of the service rendered to the shippers as well as the cost of the service to the carriers.

Do you agree that that is an element that should be considered?

Commissioner EASTMAN. I do, and I think there is no doubt that is fully recognized and solidly established by the precedents, in connection with determining what is a just and reasonable rate.

Mr. HOCH. You think that is of such importance, from the shippers' standpoint that it should be included, along with the other factors to which particular attention is called?

Commissioner EASTMAN. I would not have any objection to its being done. I think that it is so well established that that is to be considered in determining what are just and reasonable rates, and inasmuch as we start this proposed provision with the words "in the exercise of its power to prescribe just and reasonable rates," that that would be considered in any event.

Mr. HOCH. Is it any better established than some of these other factors which you do call attention to? Is not the need of maintaining adequate service as well established in the minds of the commission now as the necessity of considering the value of the service?

Commissioner EASTMAN. Well, personally I think it is; however, there are a great many who do not think it is.

I think I should say, perhaps, with respect to the value of the service that it is a matter of some doubt as to how that principle is going to be maintained in the face of truck competition. It has been the practice of the railroads to charge relatively more for high-valued traffic, to put a greater burden on that. We have always regarded that as proper, but that may mean that you get rates well up above the cost of service, and it may mean, if you do that, that you will encourage truck competition, because it gives the trucks a better opportunity to come in and take the traffic away from you.

Now, so long as you do not have competition of that kind, you could maintain that principle much better than you probably can in the face of such competition.

It has been the practice in the past to throw the burden, so far as possible, on the high-valued traffic—in other words, to place the burden where it can be best borne—and it has also been a practice, to some extent at least, to treat long-haul traffic a little more favorably than you treat short-haul, to put more of a burden on the short hauls. Now, unfortunately, truck competition manifests itself particularly in the case of short hauls and in the case of the high-valued commodities. That may result in compelling some reconstruction of the rate structure and you may find yourself eventually forced to place a greater burden than theretofore on long-haul traffic, and a greater burden on low-valued basic commodities than has been done in the past. I mention that not as a certainty, but as a possible result.

Mr. HOCH. That is an illustration of the fact that horizontal increases of freight rates is not a scientific way to adjust freight rates; is that true?

Commissioner EASTMAN. I think that is true, especially when you are faced by such a complicated situation as you have at the present time, due to competing transportation agencies.

Mr. HOCH. And, horizontal advances which we had particularly during and just after the period of Federal control, were only justified, that is, that method, was only justified from the standpoint of expediency?

Commissioner EASTMAN. Well, a good many would agree with you on that. If you did not have this competition to consider, I am inclined to think that when cost of service goes up, a horizontal increase is a very fair way of adjusting the rates to that increased cost of service, provided the rates to begin with are properly adjusted.

Mr. HOCH. However, it often tends to accentuate such inequalities which may have existed in the rate structure before the horizontal increase?

Commissioner EASTMAN. That is true.

Mr. HOCH. That certainly is true with reference to the bulky products which form a large part of the traffic throughout my section of the country.

Going to this proposal that you make here, I notice—I call attention to the sentence which reads:

The fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or reducing rates, as the case may be.

Now, is there any intention in that language to convey the idea that times of economic depression call for increased rates, while times of economic prosperity will call for decrease of rates?

Commissioner EASTMAN. No.

Mr. HOCH. The two seem to be set over against each other.

Commissioner EASTMAN. The intention was not to convey that impression. If it is so worded as to convey that idea, I think that it ought to be changed.

Mr. HOCH. What I am trying to get at is this: Is there any reason for contending that the mere fact that we have economic depression and reduced revenues on the part of the railroads, is that in itself a sufficient argument for increasing the rates?

Commissioner EASTMAN. Well, that is precisely the position that was taken by the railroads in the 15 per cent case, that it was neces-

sary for them to prove no more than that their revenues were insufficient to produce the stipulated earnings.

Mr. HOCH. With reference to the decreases which were made in 1921 and to the fact that instead of resulting in a decrease in revenue, there followed an increase in revenue.

Commissioner EASTMAN. I have said that may have been, and I am inclined to think probably it was, a coincidence.

Mr. HOCH. At any rate, it is certainly a reasonable assumption that there might be circumstances under which a decrease in rates is what is needed in order to get more revenue rather than increase in the rates.

Commissioner EASTMAN. I think that is true.

Mr. HOCH. I would not want anything in the law to lend force to the contention that the contrary is always true.

Commissioner EASTMAN. Well, this was intended to intimate that it is desirable in times of prosperity to permit the carriers to earn an excess to balance any deficiencies in times of economic depression. Now perhaps that idea is not conveyed as well in that language as it might be.

Mr. HOCH. Mr. Chairman, I had one or two questions with reference to the recapture provision, but if anyone desires to interrogate the witness on this matter, rule of rate making, I do not want to interfere.

The CHAIRMAN. Go ahead.

Mr. BURTNES. I have one or two questions on this particular point, Mr. Chairman.

Mr. HOCH. Very well.

The CHAIRMAN. Mr. Burtness.

Mr. BURTNES. Now, on this point that Mr. Hoch apparently has in mind, it seems to me that a confusion may arise, because of the use of the phrase "as the case may be"; that is, occasion an argument for increases during depressions, and decreases in prosperous times.

Why could not those words be left out and possibly insert the word "either" before the word "increase," so that the clause would read: "shall not necessarily be regarded as a reason for either increasing or reducing rates"?

I do not know whether that would be satisfactory. It might make it worse. But, I just thought of that language, because I did get the same notion Mr. Hoch seems to have as to the two being so offset as to be at least ambiguous.

Commissioner EASTMAN. Well, the words "as the case may be" were intended to indicate that the word "increasing" was to be coupled with the economic depression part of it, and the word "reducing" with the economic prosperity part of it.

Mr. HOCH. That is what I objected to, because that gives credence to the contention to which I have referred.

Commissioner EASTMAN. Well, that states that it "shall not necessarily be" the result.

Mr. BURTNES. Of course, all you want to do is to just write a provision in there so that while the argument may still be left, and be determined on the merits of it, the idea is that just changed economic conditions is not to be taken as prima facie reasons for either increasing or decreasing rates, regardless of what argument is made, in that respect.

Commissioner EASTMAN. Well, it is quite possible that language can be improved and I shall be glad to give further consideration to that, Mr. Chairman.

Mr. BURTNES. One more question. If I understand you correctly, as far as you are concerned, personally, you would have no objection to qualifying, if it would in fact be a qualification, the word "adequate" by inserting the word "reasonably"?

Commissioner EASTMAN. I would not.

Mr. BURTNES. Would it, in your opinion, be a change at all? Would "reasonably adequate," carry a different meaning from "adequate"?

Commissioner EASTMAN. It would not, as I would interpret the word "adequate."

Mr. BURTNES. That is all.

Mr. HUDDLESTON. I want to ask a question.

The CHAIRMAN. Mr. Huddleston.

Mr. HUDDLESTON. Mr. Eastman, in deciding upon what is a just and reasonable rate, does the commission consider the cost to the carrier of the service?

Commissioner EASTMAN. It does, whenever it has evidence in regard to that matter before it. That is difficult evidence to procure. In an increasing number of important cases it is submitted to the commission. Such evidence has been presented to the commission in an increasing number of cases. In the ordinary case of small scope, no evidence of that kind is presented. The usual evidence in such cases takes the form of rate comparisons, and rate comparisons have furnished the supporting evidence on both sides in the great majority of cases considered by the commission. But, as I say, in an increasing number of cases an attempt has been made to furnish studies of what the cost to furnish the particular service is. Now, that is a very difficult matter, and when such cost studies are presented, we find that, as a rule, they are criticized by both parties and very often the criticisms are valid.

Mr. HUDDLESTON. Is that factor included in any of the clauses in this proposed amendment that you have submitted?

Commissioner EASTMAN. Included in what?

Mr. HUDDLESTON. Is that covered by any of the provisions of this proposed amendment?

Commissioner EASTMAN. Well, it is included in the expression "just and reasonable rates," and, of course, we are largely talking in this paragraph 2 about the general rate level. So far as a general rate level is concerned, the cost of service is reflected by the operating results of the carriers. It is clear as to what the cost of the entire service is. What we lack is the cost of the hauling of particular commodities or between particular points.

Mr. HUDDLESTON. The provision that "in the exercise of its power to prescribe just and reasonable rates" seems to include fixing of particular rates as well as the general rate level.

Commissioner EASTMAN. Yes, I think that that is true.

Mr. HUDDLESTON. My thought is that the ideal rate is a rate which covers the cost of service performed, plus whatever profit might be considered fair. Looking at this, it seems to me that that thought is altogether ignored.

Commissioner EASTMAN. Well, of course, under the doctrine which has prevailed in the past, it is necessary to consider, not only cost of service, but value of service, and that means that some traffic will carry a greater part of the burden than other traffic. Under the decisions of the Supreme Court we can not require a railroad to carry any kind of traffic at less than cost, but I think we are at liberty to fix rates so that a greater amount of profit is obtained from certain forms of traffic than from other forms.

Mr. HUDDLESTON. And that other kinds of traffic may be carried at a loss?

Commissioner EASTMAN. Not at a loss, under the decisions of the Supreme Court, if we know what the cost is.

Now, as I say, when you get into the realm of cost, you are getting into a very difficult matter, and for this reason: When it comes to determining what the costs of carrying a particular kind of traffic are, or of carrying traffic between particular points, you have got to apportion a lot of items of expense which are incurred in common for a good many different forms of service, and these apportionments have to be made on a more or less arbitrary basis—that is where the dispute comes, as to whether those methods of apportioning expenses incurred in common for different kinds of service are reasonable methods of apportionment, and I assure you there is a tremendous opportunity for debate in regard to those matters.

Mr. HUDDLESTON. I have heard it said that in fixing the fundamental base of rates on which all rates are formed, practically, no attention has been given to the cost of the service.

Commissioner EASTMAN. Well, I think the railroads have not attempted in general to determine what are the costs of hauling particular commodities, or traffic between particular points. I think that they do have various rule-of-thumb measurements in their mind which influence them in making rates. I know one particular road which has worked out some average ton-mile costs, and its traffic department is instructed in making rates to keep those average costs in mind and not to go below them without very careful consideration. A certain rule-of-thumb measurement of that kind I think is used, but it is quite true that there has not been an attempt to ascertain costs in the way in which many other industries at the present time attempt it, by means of a complete system of cost accounting.

The CHAIRMAN. Any other members desire to ask any questions on rate making?

All right, Mr. Hoch.

Mr. HOCH. In the recent rate case involving 15 per cent rate increase, the commission stated, I believe, that as to many of the roads there was no justification for increased rates, and the commission suggested a pooling arrangement under which certain divisions were to be made of such—I would not say excess—but such extra earnings as might result from the increase.

Now, if we repeal the recapture provision and have in the law no provision for such pooling, what will there be left for avoiding an unjustifiable increase in rates on the part of some of the carriers?

Commissioner EASTMAN. Well, the pooling which the commission proposed in its original report in the 15 per cent case was not based on the recapture provisions of the law. It was based upon the provisions of paragraph 1 of section 5.

Mr. HOCH. Yes; I understand that, Mr. Commissioner; but that was merely a suggestion on the part of the commission or an attempt, perhaps, on the part of the commission, to attach a condition which the law itself does not specifically call for. Is that true?

Commissioner EASTMAN. Well, the commission felt that it had authority under the law to require the carriers, as a condition to establishing the proposed rates, to agree to such a pooling plan. Now, Colonel Thom disputes that authority, and in his testimony I notice that he mentioned that matter and discussed the law with reference to pooling. All I can say on that subject was said in a dissenting opinion which I rendered in the supplemental report in the 15 per cent case, where the pooling plan was abandoned. Now, what I said there answers what Colonel Thom said, in my opinion.

Mr. HOCH. What I am interested in for the moment is the question of whether if some sort of an arrangement as that pooling arrangement is necessary or advisable in order to take care of the situation to which the commission called the attention, namely, the fact that as to many of the carriers no increases were justified, then why should that not be settled beyond controversy by giving the commission the power definitely to provide some sort of pooling arrangement? Would it not be left, in other words, in controversy if we did not provide for that?

Commissioner EASTMAN. Yes, you may be right about that. I had not given that matter any thought in this connection, because it did not seem to me to be within the purview of this hearing, which deals with section 15a. The matter that you now speak of is included in section 5.

Mr. HOCH. That idea was back of the plan, at least, in the mind of those who were really responsible for the recapture provision?

Commissioner EASTMAN. There is a resemblance; yes, sir.

Mr. HOCH. Now, do you think that the recapture provision has had a tendency to promote consolidations?

Commissioner EASTMAN. I have seen no indication that it worked out in that way.

Mr. HOCH. In the nature of things, does it not seem that it might have such a tendency? In other words, the philosophy that is involved in the provision seems to me to tend toward consolidation.

Commissioner EASTMAN. Well now, I know that it was felt by many that the recapture provisions would result in the strong carriers welcoming the opportunity to take in at a low price a carrier whose rate-making value was materially above the price at which it could be secured, which would give an opportunity to spread the existing earnings of the system over a large valuation.

Now, as I say, I have not observed any tendency on the part of the railroads to take over lines of that character for that reason. There have been instances where there have been weak lines that have been taken over by strong lines, but in general, we have had to attempt to force the carriers to take over short and weak lines, rather than having them propose it voluntarily. Now, that may be due to the fact that some of the roads, many of the roads, which are regarded as strong, or are strong, financially, are not in the recapture class.

Mr. HOCH. You regard proper consolidations, at least, as the only practical means in sight of meeting the so-called problem of the weak lines, do you not?



Commissioner EASTMAN. Well, I think there is more to be said for consolidation in the case of weak lines than there is in other respects. I have never thought that consolidation offered the most hope of securing economies such as I discussed in my answer to Chairman Rayburn's question, in other words, the economies that would come about through the elimination of wasteful competition. I think that has got to be done by cooperation between the railroads, that is is not likely to be done through consolidations, where the principle of competition is maintained, and furthermore that the process of consolidation takes a long time and is slow, and it has to be watched very carefully or abuses may arise which will make the situation worse than it was before.

Mr. HOCH. I appreciate the difference of opinion that has been expressed as to the importance of the weak-line problem, but here is a provision which was conceived ostensibly as a means of meeting the problem of the weak lines, namely, the recapture provision. Now, it is said that it has failed in that purpose, and if there is a problem of weak lines, we are leaving them with the only thing in sight for meeting that problem, however great it may be, with the movement for consolidation.

Commissioner EASTMAN. Well, there is in addition the matter of increasing the divisions.

Mr. HOCH. Divisions of the rates?

Commissioner EASTMAN. Yes. That was done, for example, in the case of the Kansas City, Mexico & Orient, and I think it was done in the case of the Missouri & North Arkansas, if I remember rightly. The short lines have been disposed to think that had not been done in as many cases as it should be.

Mr. HOCH. Have you given any consideration to some provision, in case we should provide for a term of years under which a recapture provision should be enforced, rather than by each single year, for giving the commission power to make compromise settlements?

Commissioner EASTMAN. Well, I think that in a letter to the Senate committee in regard to the Howell bill, such a provision was suggested. I think that was the first letter we wrote to the Senate committee in regard to the Howell bill. I can furnish you with a copy of the suggestions made at that time if you desire it.

Mr. HOCH. Just in a word, does the commission take a position for or against the proposition to give power to the Interstate Commerce Commission to make compromise settlements?

Mr. EASTMAN. It was put forward at that time in connection with that letter.

Mr. HOCH. What I have in mind, is, it occurred to me, as a result of your statement that we would still be left with litigation in case we changed to a 10-year or perhaps 11-year period, whether it might be practical, to avoid some of the litigation by providing for compromise settlements.

Commissioner EASTMAN. I think it would be advisable. Some members of the commission, as I recall, objected to such a provision. I think the natural result would be to shrink somewhat the amount claimed, but I should favor, myself, such a provision.

STATEMENT IN REGARD TO COMPROMISE SETTLEMENTS INSERTED BY  
COMMISSIONER EASTMAN

In a report to the Senate Committee on Interstate Commerce on January 20, 1930, in regard to S. J. Res. 104 (71st Cong., 2d sess.), introduced by Senator Howell, relating to valuation of the properties of common carriers under the Interstate Commerce Act, the commission proposed a plan for amending section 15a which involved a declaration of policy by Congress as to how the rate bases to be used for rate-making and recapture purposes should be ascertained by the commission. At that time it was not proposed to repeal the recapture provisions. In that connection the following statement was made in the report:

"Some of the members of the commission who join otherwise in this report are of the opinion that such legislation as is recommended should be limited in its application to future rate making and future recapture of excess earnings. In the case of rate making its application would, of course, necessarily be confined to the future, so that this question really has bearing only on recapture. If Congress should be of the view that the method of valuation which we are here urging for adoption should not or can not properly, for any reason, be applied in determining the amount of excess earnings to be paid by the respective railroad companies during the recapture periods intervening between the effective date of the transportation act, 1920, and the date of the passage of this proposed legislation, then we suggest that a further provision be incorporated in the legislation.

"This further provision which we suggest would specifically authorize us by such proceedings, formal or informal, as in our discretion may seem necessary and proper, to agree with the respective carriers upon the amounts of excess earnings in these past periods to be paid by them. Our reason for making this suggestion is that present methods of valuation are so cumbersome and so provocative of controversy and litigation, following prolonged proceedings, that as a practical matter it will be almost impossible, if the usual methods of judicial procedure are followed, to ascertain and collect excess earnings without great delay and expense, attended by litigation which may react adversely on the public interest. Authority to agree with the carriers would, we believe, enable us to make fair settlements with reasonable promptness which would, under all the circumstances, not be inconsistent with the public interest.

"There is, indeed, much to be said for such a plan, even if Congress should be of the opinion that the method of valuation which we are urging can properly be applied to the past recapture periods. We are confronted at present, owing to the litigation which has already ensued over recapture, with a tremendous accumulation of recapture cases covering past periods. Authority to agree, such as we suggest, would in any event greatly help in the prompt disposition of these cases, and the sooner this work can be brought to a current and stable basis the better for all concerned, including both the investors in and the users of the railroads.

"Commissioner Farrell does not agree with this recommendation for authority to make agreements with carriers concerning amounts due under the recapture clause of section 15a."

Subsequently a bill was introduced by Senator Howell, S. 4005 (71st Cong., 2d sess.), which provided in part for such an amendment of section 15a as the commission had recommended in its report of January 20, 1930. This bill provided that the specified method of ascertaining the valuation or rate base should be applied, subject to certain conditions, to recapture in the past, if a carrier so elected. If there was no such election, however, the following provisions for agreed settlements of valuation questions were contained in paragraph (8) of the proposed amended section:

"(b) In the case of a carrier which does not make the aforesaid election the commission shall be authorized, for the purpose of expediting settlements for the period prior to January 1, 1930, to conduct such proceedings of a formal or informal nature as it may find necessary and proper for the purpose of arriving at an agreement with a carrier or system with respect to the amount or amounts of excess income to be recoverable by and paid to the commission; and the commission shall also be authorized to make such agreements, in the exercise of its reasonable judgment based on a careful consideration of the law and the facts, so as to bring about a prompt and substantial compliance with the provisions of paragraph (6) of this section as originally enacted; but no such agreement shall thereafter be used in any proceeding before the commission or in a court of the United States as evidence of the value of the property used by said carrier or system.

"(c) If the commission shall find it impossible to make such an agreement, with reasonable expedition, with a carrier that does not make the aforesaid

election, it shall proceed to enforce compliance with the provisions of paragraph (6) of this section as originally enacted and to recover the excess income recoverable thereunder, together with interest at the rate of 6 per cent per annum from four months after the close of the period for which said excess income was recoverable to the date of its payment to the commission: *Provided, however,* That the amount of said interest may be reduced appropriately upon proof by the carrier that it exceeds the benefit derived from the use of such excess income."

In its report to the Senate Committee on May 17, 1930, in regard to S. 4005, the commission had this to say with respect to the foregoing provisions:

"This new recapture plan is to date from January 1, 1930, but the carriers are given the right to elect to have it applied to past years prior to that date. In the event that they do not so elect, the existing law stands as to those past years, but the commission is empowered to reach agreements with the carriers as to the amounts recapturable in the past. This is in line with the recommendation made in our letter to you of January 20, for the reasons therein stated. It is definitely provided, however, that 'no such agreement shall thereafter be used in any proceeding before the commission or in a court of the United States as evidence of the value of the property used for said carrier or systems.' These provisions with respect to election by and agreements with the carriers are similar in all respects to provisions contained in subdivision (8) of S. 4005. There, however, it is provided in paragraph (c) that if there is no election to apply the new recapture plan to past years and no agreement is reached as to the amount recapturable in those years, the commission shall proceed to enforce compliance with the provisions of the present statute and to recover the excess income recapturable thereunder, together with interest at the rate of 6 per cent, subject to the proviso that the 'amount of said interest may be reduced appropriately upon proof by the carrier that it exceeds the benefit derived from the use of such excess income.' It is further provided, in paragraph (d), that if a carrier shall use any part of its excess income [after its determination] 'otherwise than as required by this act and by the rules and regulations prescribed by the commission under the authority of this act, said carrier shall be liable for interest thereon at the rate of 6 per cent per annum.' We have not included such provisions with respect to the payment of interest in our alternative draft, but they merit careful consideration."

The provision with respect to agreed settlements of valuation questions which the commission then recommended (Commissioner Farrell disapproving) was as follows:

"In the event that a carrier does not make the aforesaid election, the commission shall be authorized, for the purpose of expediting settlements for the period prior to January 1, 1930, to conduct such proceedings of a formal or informal nature as it may find necessary and proper for the purpose of arriving at an agreement with a carrier or system with respect to the amount or amounts of excess income to be recoverable by and paid to the commission; and the commission shall also be authorized to make such agreements, in the exercise of its reasonable judgment based on a careful consideration of the law and the facts, so as to bring about a prompt and substantial compliance with the provisions of paragraph (6) as originally enacted; but no such agreement shall thereafter be used in any proceeding before the commission or in a court of the United States as evidence of the value of the property used by said carrier or system."

Mr. HOCH. In every case, so far as you know, the claim upon the carriers would be less if it were on the whole period rather than if it is left as it is in the present law? Is that not true?

Commissioner EASTMAN. You include 1931 in that?

Mr. HOCH. Well, yes; including 1931.

Commissioner EASTMAN. I am inclined to believe so, although I have not checked it up. If you include 1931, it would probably be less in every case, because I doubt whether there is any carrier that earned in excess of 6 per cent in that year, although I may be very grossly in error in making that guess; but so far as the period ending December 31, 1930, is concerned, I think there are a number of cases, may be a good many, where there might be an amount to be recaptured for each and every year in the period. Now, where that is the case there would be no reduction for the whole period.

Mr. HOCH. But, most of them would be very materially reduced.

Commissioner EASTMAN. I think so.

Mr. HOCH. When does interest begin to run on these amounts claimed—when the final report is served, or when the tentative report is served?

Commissioner EASTMAN. I do not know whether there is any member of our valuation force here who can answer that better than I can. My recollection is that in the O'Fallon case the court said interest did not begin to run until there had been a final determination by the court.

Mr. Benton informs me that it is not until there is a final determination by the commission. In other words, if the case is remanded to the commission for reconsideration, I assume that interest would not begin to run until the corrections had been made which were required by the court.

Mr. HOCH. That seems rather peculiar, a rather peculiar situation to me. Here are tentative reports that are served upon the carriers. Now, in case it should subsequently be proved that the amount claimed was the correct amount, it seems rather peculiar that interest should not begin to run until the final order was served.

I notice that there are about 75 carriers as to which the hearings have been completed but as to which no reports have yet been served. The delay in serving those reports—and I am not saying they are unjustifiably delayed—but, the fact that there is delay is saving a vast amount to the railroads in interest charges. Is that not true?

Commissioner EASTMAN. Well, if I understand the situation, interest does not begin to run until we have made our final report, not the tentative report.

Mr. HOCH. Well, whatever the time that the interest begins to run, to the extent there is delay the Government is losing interest on money which the roads have which belongs to the Government.

Commissioner EASTMAN. That is true.

Mr. HOCH. And the amount that you have given, \$361,000,000, includes no interest?

Commissioner EASTMAN. That is correct.

Mr. BURTNES. Mr. Chairman, I overlooked asking one question on the redraft of paragraph (2). I notice in the matter of transportation facilities you have added the additional guide of efficiency, in addition to what was in the language before—that is, in addition to "adequate." Is there any particular significance to the words "and efficient" in the fourth line of your draft?

Commissioner EASTMAN. No; I think I said I was following there the draft which Colonel Thom had submitted. He had that language in there, and I saw no objection to it. I did strike out the words "to the necessity for enlarging and improving such facilities and services," for the very reasons which Congressman Huddleston has suggested.

Mr. BURTNES. Do those words really add anything to the word "adequate" as used there?

Commissioner EASTMAN. Well, I think they might. You might have facilities which were adequate from the standpoint of capacity, but were not efficiently operated.

Mr. BURTNES. Of course, you have the limitation and qualifications later of efficient, honest, and economical management, and so on.

Commissioner EASTMAN. Yes.

Mr. BURTNES. So that thought is brought out there.

The CHAIRMAN. Mr. Eastman, we are very much obliged to you for your very enlightening discussion again.

Are you through?

Commissioner EASTMAN. All that I had intended to add was some comments on the rate base theory. I would be quite content to incorporate those at the end of my remarks, if that is satisfactory.

The CHAIRMAN. It is, because to-morrow we must get through with three witnesses, and if we are going to have Mr. Lewis on valuation, we must have him Friday, and I will state to the committee, next Wednesday, on the 17th, we have fixed to open the hearings on the holding company's bill, and we will go through that hearing while we are having these hearings printed, and then we will be ready to take up both bills, probably at an early date for consideration.

Mr. SHALLENBERGER. Mr. Chairman, I would like to ask the commissioner a question.

The CHAIRMAN. Mr. Shallenberger.

Mr. SHALLENBERGER. I would like to ask you, Mr. Commissioner, about this. You have put at the bottom here:

*Provided, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.*

Do you not have that right now? Is that new law?

Commissioner EASTMAN. Well, that is a provision which is in the present section 15a.

Mr. SHALLENBERGER. It is in that section?

Commissioner EASTMAN. Yes; and was transferred to this here.

I want to thank the committee, Mr. Chairman.

The CHAIRMAN. Thank you.

The committee will now stand adjourned.

(Thereupon, at 11.48 o'clock a. m., the committee adjourned to meet the following morning, Thursday, February 11, 1932, at 10 o'clock a. m.)

(The following statement was presented by commissioner Eastman:)

While the briefer form of bill, namely, H. R. 7117, is acceptable to the commission and we are not in any way insisting on H. R. 7116, there are certain comments which I should like to add in regard to the rate base plan which the latter bill contains.

Mr. Bledsoe was very fair indeed in his comments upon the making and regulation of freight rates. In his discussion of valuation, however, he held fast to the time-worn railroad formula that the "value" of railroad property is measured by current cost of reproduction and the present value of land, minus depreciation and plus "going value." Apparently he believes that in the case of a well-operated, well-maintained, and successful railroad system "going value" would offset, or more than offset, depreciation. He would ascertain original cost, if possible, but accord it no weight except in the case of a newly-constructed property—in other words, only when original cost and reproduction cost coincide.

This formula has been pressed upon the commission by the railroads since our valuation began. It is to Mr. Bledsoe's credit that he adheres to it at a time when opportunists in the railroad and utility field are beginning to discard it, because of the unfavorable results which it is likely to produce in a period of low and falling prices. In support of it he relies largely upon *McArdle v. Indianapolis Water Co.* (272 U. S. 400), a decision written by Justice Butler and reflecting, to some extent, views which he expressed, no doubt with the utmost honesty and sincerity, when he was valuation counsel for the railroads.

The commission has never accepted this formula, and does not now accept it. The recent decision in the Richmond, Fredericksburg & Potomac recapture case (170 I. C. C. 451), copies of which have been furnished to the committee, discusses it fully and analyzes the *McArdle* case, among others. I direct attention

particularly to the discussion on pages 506-508 of that decision. The lawyers of the commission are prepared to support and defend that decision in court, and we fully believe that Mr. Bledsoe's formula will not be sustained.

When it comes to the making of rates, however, Mr. Bledsoe practically throws his valuation formula into the discard and goes over to the investment basis. I quote the following from his testimony:

\* \* \* "I do not anticipate if this recapture question were disposed of that there would be any real controversy in the future as to value, unless the commission made rates so extremely low that they did not yield a fair return, I might say, upon investment of the carriers in the properties. I have used investment for comparison, as I think that is the fair thing to do, and I do not believe that you can find any instance when carriers have insisted, I am certain that I have never insisted, that carriers were entitled to rates on the basis of the high prices prevailing in 1919 or 1920."

The same idea underlies the rate-base plan which H. R. 7116 contains. I have been accused by some of attempting to bring about public ownership and operation of railroads in all manner of devious and cunningly concealed ways. The most effective way to promote that end, in my opinion, would be to work for heavy increases in freight rates under present conditions, the speedy consolidation of the railroads into a very few systems, and acceptance by the courts of the extreme valuation doctrines urged by the carriers. On the other hand, if investors and carriers really wish to promote the cause of private ownership and operation, they could do no better than to urge the rate-base plan reflected in H. R. 7116, because it is a reasonable and practicable plan for guiding public regulation along constitutional lines. Private ownership and operation will be furthered by adhering to what is reasonable and practicable and eschewing what is unreasonable and impracticable. It is too much to expect, perhaps, that investors and carriers will be able to see this. Nevertheless, it is true.

As I endeavored to explain in my opening statement, the rate-base plan seeks to achieve in a reasonable and practicable way precisely the ends at which the valuation decisions of the Supreme Court are, upon analysis, found to be directed. H. R. 7116 is intended to produce the same results as H. R. 7117. The only difference in the two bills is that H. R. 7116 undertakes to set up for public observation a barometer of earnings. Some such barometer will, in my judgment, have to be set up by the commission in any event. It was done in the general rate increase cases prior to 1920, although then absence of the data which our valuation work has since made available rendered it necessary to use the more imperfect check of return on the book investment of the carriers in road and equipment.

The testimony in these hearings indicates much misunderstanding of the rate-base plan. Essentially the base used is an approximation, generously and liberally arrived at, of the real investment in carrier property, less such amount as is reserved for depreciation. A legitimate criticism, indeed, is that it is too generous and liberal an approximation. Mr. Benton stresses the point that it will include the investment in a good many ill-conceived and unwisely constructed carrier properties which would be unable to earn any substantial return under any rates. This is true; but full allowance can be made for that fact in determining the fair average return on the aggregate rate base, as fair return is defined in the bill. It is that definition which makes H. R. 7116 and H. R. 7117 essentially the same, so far as the ends at which they are directed are concerned.

The argument is made that the rate-base plan would introduce additional possibilities of litigation, in comparison with H. R. 7117. On the contrary, H. R. 7116 does not require the commission to adhere to any inflexible standard. It merely sets up that standard as a barometer and guide, and recognizes the fact that economic conditions will necessarily involve deviations from it. There are no greater opportunities, in my judgment, for constitutional attack on H. R. 7116 than exist in the case of H. R. 7117.

However, this barometer or guide was set up for public observation in H. R. 7116 as a means of further reassurance to the carriers and the investors in their securities. Apparently they do not regard it in that light. This may be, and I believe is, bad judgment on their part, but in view of their position, no reason exists why the commission should insist upon H. R. 7116 in preference to H. R. 7117.



## RAILROAD LEGISLATION

THURSDAY, FEBRUARY 11, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., Hon. Sam Rayburn (chairman) presiding.

The CHAIRMAN. The committee will come to order.

### STATEMENT OF C. D. CASS, GENERAL COUNSEL, AMERICAN ELECTRIC RAILWAY ASSOCIATION

The CHAIRMAN. All right, Mr. Cass, you may proceed.

Mr. CASS. My name is C. D. Cass, general counsel for the American Electric Railway Association.

This organization is nation-wide in its scope and comprises in its membership the substantial part of all electric railway mileage in the United States.

I want to try and place before you a rather complete picture of the relation of electric railways as to this section 15a, and to the proposed bills, and, if agreeable to the committee, I should like to finish my formal statement, and then submit to questions.

The CHAIRMAN. Mr. Cass, I do not know whether we are going to be able to let you do that, because I think that your statement will take a full hour?

Mr. CASS. No, my formal statement will take me about 25 or 30 minutes.

The present provisions of section 15a of the interstate commerce act exclude some electric railways in the following language of paragraph (1).

When used in this section \* \* \* the term "carrier" means a carrier by railroad \* \* \* subject to this act, excluding \* \* \* (b) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight \* \* \*.

In several other sections of the interstate commerce act there appears language similar to this, which was intended to exclude certain electric railways from the operation of the provisions of such sections. There are no such exclusion clauses, however, in most sections of the act, and, of course, in the rate-making sections (1) and (15), electric railways engaged in interstate commerce are included the same as steam railroads. In other words, the commission has the same control and authority regarding the rates of electric railways transacting interstate business as it has regarding such matters on the steam railroads. Very little difference of opinion regarding this has ever

existed, but what little did exist was eliminated by the decision of the Supreme Court of the United States in the Village of Hubbard case, 266 U. S. 274, where such court, speaking through Justice Brandeis, said:

The basis for the jurisdiction of the commission over them (that is, electric railroads) is the generality of the language of the original act, which declared in section 1 that its provisions "shall apply to any common carrier engaged in the transportation of passengers or of property \* \* \* by railroad." As the act made no distinction between railroads operated by steam and those operated by electricity, the commission made none.

It is, therefore, definitely settled that electric railways transporting passengers and freight in interstate commerce are subject to the jurisdiction of the Interstate Commerce Commission under the interstate commerce act in general the same as steam railroads.

As stated, however, there are several places in the interstate commerce act where the Congress has seen fit affirmatively to exclude certain electric railways from sections of the law, and one of these exclusions is contained in the language of section 15a that I have quoted. Therefore, unless a street or suburban electric railway is "operated as a part of a general steam railroad system of transportation" or an interurban electric railway is so operated or "engaged in the general transportation of freight," it is not subject to any of the provisions contained in section 15a as now constituted.

It seems clear from the reading of the exclusion language that Congress intended that the value of electric railways operated by steam railroads should be included in the aggregate values of railroads for rate-making purposes, and that Congress further intended that electric railways, though independently operated, if engaged in the general transportation of freight similar to the business transacted by steam railroads, should also be included in arriving at an aggregate value of railway property for rate-making purposes.

Up to this time there has been no valuation of electric railways by the Interstate Commerce Commission, and, so far as I am aware, there have been no values of electric railways considered in the aggregate values of railroads in groups for rate-making purposes.

The extent of the relation of electric railways to section 15a as it now stands on the statute books is best evidenced by the annual report of the Interstate Commerce Commission concerning electric railways. This annual report is put out in the fall of each year by the fall of each year by the Bureau of Statistics of the Interstate Commerce Commission, and contains selected financial and operating data of electric railways for the calendar year preceding. The last such report is for the calendar year ended December 31, 1930, and is dated September 30, 1931, and contains the following information which is summarized for the purpose of brevity:

Electric railways reporting to the commission.....	195
Miles of road operated.....	8,958
Investment in road and equipment.....	\$977,443,648
Number of employees.....	38,769
Freight cars owned.....	12,639
Passenger cars owned.....	7,026

In quoting these figures I do not intend to imply that all of the electric railways listed in the commission's annual statistical report are subject to the provisions of section 15a. On the contrary, some of them, probably are not subject to those provisions, but no final

determination of the matter has ever been made, and but three or four individual cases involving the subject have ever been decided by the commission.

Shortly after the passage of the transportation act, 1920, the commission in an effort to ascertain the relation of electric railways to section 15a investigated those carriers by means of questionnaires and oral argument, and reached the conclusion that each electric railroad must be considered separately in determining whether or not such railroad came under its provisions. (Application of sec. 15a of the interstate commerce act to electric railways, 86 I. C. C. 751.)

Following this general decision two or three individual electric carriers asked to be relieved from the provisions of section 15a, contending that they were not "engaged in the general transportation of freight." In one case the electric line was held to be engaged in the general transportation of freight and subject to section 15a. (Application of sec. 15a to Lackawanna & Wyoming Valley R. R., 105 I. C. C. 178.) In another case the electric line was held to be excluded from the provisions of section 15a because it was not engaged in the general transportation of freight. (Application of sec. 15a to Interstate Public Service Co., 117 I. C. C. 228.)

These facts are mentioned to show that a fairly large segment of the rail transportation industry engaged in interstate commerce has had no influence upon the commission's activities under section 15a. Values have been found and rates have been fixed mostly without regard to the relationship of large property values in electric railways and without taking into consideration a substantial number of miles of railroad track. This is not mentioned in a spirit of criticism but is stated for the purpose of indicating that rate fixing based upon aggregate value of property is not an indispensable factor in commission regulation.

The exclusion of part of the electric railways from section 15a originally was no doubt predicated upon the absence of any valuation of property as well as the relative unimportance of electric railways compared to steam railroad systems and the further fact that electric railway transportation had been quite largely considered as a matter for local State regulation as far as possible. There were also some electric railways at that time that were desirous of being excluded from the recapture provisions of the act. So in its wisdom Congress provided the exclusions that I have described.

It would be pertinent at this point to examine the relation of the recapture provisions of section 15a to electric railways reporting to the commission.

Suppose that the recapture provisions of 15a are not repealed ab initio. In what position do we find this class of carriers? The first step that the commission would have to take to comply with the provisions of 15a would be a series of hearings running over a very long period of time in which each individual carrier would have to be examined to determine whether or not it was excluded by the language in paragraph 1. One hundred and ninety-five such hearings would have to be held in order that each electric carrier reporting to the commission as of the year ended December 31, 1930, be examined to determine its status. After this first step, which would take a long period of time, the carriers subject to recapture of earnings according to the definition in paragraph 1 would have been set aside for further consideration. How many of these there may be

no one can forecast, but all that are engaged in the general transportation of freight and all that are operated as a part of a general steam railroad system of transportation would be in the class subject to recapture.

But the commission's decision in regard to this would not necessarily be final. The questions as to whether or not an electric carrier is (a) operated as a part of a general steam railroad system of transportation, or is (b) engaged in the general transportation of freight, are ones about which opinions may differ. No final determination has ever been made of the meaning of the language contained in these two exclusion clauses. Whether or not the mere fact of ownership by a steam railroad is sufficient to bring such carrier within the language "operated as a part of a general steam railroad system of transportation" has not been passed upon by the courts. Some electric carriers are owned by steam railroads but are operated entirely independently, with completely separate executive and operating personnel. On the other hand, there are electric carriers under lease to steam railroads which have some common officers and other personnel but are operated independently, having connections with other steam railroads than the one to which it is leased. Other examples of these ramifications could be given. These may serve to illustrate the complexity of the problem.

Then we have the question as to whether or not an independently operated electric carrier is or is not "engaged in the general transportation of freight." This question has never been finally determined. As I have heretofore stated, a very few cases have been decided by the commission, but no rule or formula has ever been laid down to enable a carrier to determine this question itself, and the Supreme Court has never passed upon it.

Both of these questions are ones that might be the cause of much litigation. For example, suppose a carrier was found by the commission to be engaged in the general transportation of freight and it was not satisfied with such finding. In such case an appeal to the courts could be taken and litigation might ensue with every carrier not satisfied. I do not mean to say that litigation would ensue, but the right of the carrier to appeal to the courts from a decision of the commission in this regard is clear, and recourse to the courts might be had by some if not many of this class of carriers.

Then the second step involved, after it has been determined what electric railways are subject, under the classification, to a recapture of excess earnings, would be a series of valuations of each of such properties. As I have before said, there has been no valuation of electric carriers under section 19a up to date. This would mean that an original valuation must be had in every instance—and a revaluation also—for every recapture year. Again the process would be interminable and in each case subject to possible litigation. I venture the assertion that the cost of this process to the Government and to the railroads would be far in excess of the possibility of any recapture of earnings from the electric carriers. A few of these electric carriers have been financially healthy for some of the recapture years. Most of them have not been. But in any event, examination of the subject indicates the length of time and the great cost in money that it would be to the Government and the carriers themselves if the recapture of earnings was attempted in regard to this class of

carriers. This seems to me to be a very forceful argument for the repeal of recapture ab initio, because if it is not repealed ab initio it means that the subject from 1920 down to the passage of this proposed law would be opened up to endless controversy in the manner that I have suggested in so far as electric railways reporting to the commission are concerned.

One of the present bills (H. R. 7116) contains exclusion language affecting electric railways. The other bill (H. R. 7117) contains no exclusion language and affects all railways engaged in interstate commerce alike.

If the principle of rate making based on aggregate value of property in groups is to be discarded and the principle of recapture of earnings is to be repealed there appears to be no necessity of making an exclusion of electric railways in the proposed new legislation. As a matter of fact, not only would there be no necessity for putting in exclusion language, but it would no doubt be unwise to make any such exclusion. In other words, if you do away with the reasons for excluding electric railways in this legislation, you should, of course, do away with the exclusion.

I have no desire to consume the time of this committee in discussing the relative merits of the two bills before you. They have been analyzed by several persons much more learned in the complexities of rate-making law than I am, and therefore it seems sufficient to say that, according to the overwhelming evidence presented at this hearing, the principle of rate making laid down in section 15a has been found impractical and unsatisfactory, and that a more simple and flexible method is desirable. Of the two bills proposed, the parties best informed seem to have the conviction that H. R. 7117 more nearly takes care of the conditions surrounding the whole subject and better serves the public interest.

In passing, I might also add that I concur in what has been heretofore said concerning the beneficial effect upon the public mind of a direction to the commission to maintain a level of rates that will attract capital sufficient to meet and provide for the transportation needs of the public.

I desire now to submit some observations with respect to the repeal of section 19a concerning the valuation of carriers subject to the act. Brief reference to the history of the valuation section of the act, in my judgment, is pertinent. In 1910, Senator La Follette, of Wisconsin, made a 3-day speech in the Senate advocating the Federal valuation of railroads, but it was not until 1913 that the valuation section was adopted. In the course of Senator La Follette's discussion of this subject in 1910 he pointed out that until a valuation of the railroads was had, the question as to whether or not a fair return was being made could not be determined. At that time there was no "fair return" provision in the statutes, and its relation to the subject of railroad rate making was only a common-law relationship based upon the then present provisions of the statute in regard to fixing rates that were just and reasonable. Fair return, as it was then known, related to cases that went to the courts on the grounds of confiscation, and there was no necessity for a valuation of railroads as a whole for any purpose of the law except as to the valuation of individual carriers when and as confiscation cases might



arise. At that time also, of course, competing forms of transportation were few in number and the control of rates so far as railroads were concerned was of vastly more importance than to-day when rate levels are based pretty largely upon an amount that can be charged in view of competing transportation agencies, which amount is very much lower than would produce a fair return upon any kind of value that could be reasonably set upon any railroad property.

In the course of Senator La Follette's address in 1910 he was interrupted by Senator Gallinger of New Hampshire and was asked this question:

I assume that the amendment proposed by the Senator from Kansas appropriating \$100,000 would not be sufficient to more than commence this work; and I will ask the Senator from Wisconsin if I am correctly informed, or approximately so, when certain gentlemen who claim to know a good deal about this matter say it will cost eight million or nine million dollars to do this work?

In reply to this question Senator La Follette described the activities of the Wisconsin Railroad Commission in a physical valuation of the properties of the railroads of that State, and stated further:

They (the Wisconsin commission) have gone step by step over every inch of this ground, and I can say to the Senator from New Hampshire that at an expense of not exceeding \$10 per mile, or \$2,400,000 for the entire mileage of the United States, we can learn the value of the physical properties of the railroad companies of this country engaged in interstate commerce.

Senator Gallinger thereupon made this statement:

I stated that I had been informed by certain parties who claim to have knowledge that it would cost eight million or nine million dollars to make the valuation. The Senator a moment ago said \$2,400,000. The Senator in 1906 put the amount at \$5,000,000.

In answer to which Senator La Follette stated as follows:

I stated at that time the total cost, I will say to the Senator from New Hampshire, of a double valuation; that is, what it would cost the Government and what in addition it would cost the railways to check over the work of the Government in order to protect their interests. If we start in on a Federal valuation of railway property the railways are likely to go step by step with the Government over all of that ground, and in all probability they will expend about as much as the Government will, and in the aggregate it will make about \$5,000,000.

Emphasizing the fact that these estimates of cost were considered to be fairly accurate, Senator Elkins during the same debate in 1910 made the following statement:

Mr. President, I have a letter from the Interstate Commerce Commission on the subject of the valuation of railroads, written March 25, 1908, more than two years ago, in which they state that the expense incident to making the examination as to the valuation of the railroads is estimated at \$3,000,000; time three years. I think it will require five years and cost \$5,000,000, and I do not think the results would justify this vast expenditure.

I think that I would like to interpolate at this point, as a comparison, a statement made by Commissioner Lewis to the subcommittee on appropriations, on January 17, 1930, and I take it from the hearings before the subcommittee of the House Committee on Appropriations, Seventy-first Congress, second session, at page 479. This is quoting Commissioner Lewis, who was then in charge of valuations. I guess he still is.

Again, for the benefit of the members who have not been here for all these years, I am going to answer a question of Mr. Wood, who was then chairman of the subcommittee.

He asked when are we going to get through with this work? I said to him, and I am saying to you, never. Just as long as this act stays on the books, that long you will be making appropriations. I do not know whether they are going to be less or more, but I would not be much surprised if they are more.

How far wrong all the quoted figures just given were, in regard to the cost of valuation, is almost amazing. Since 1913 and up to date the Federal Government has expended more than \$40,000,000 for the cost of the prosecution of valuation work, and Colonel Thom advised that more than \$137,000,000 have been expended by the class I steam railroads of the United States. Nineteen years have elapsed and the valuations have not yet been concluded on the steam railroads. Nothing has been done in regard to valuing the minor carriers under the act, such as express companies, pipe lines, telephone companies, or electric railways; and Commissioner Lewis, in testifying before a subcommittee of the Appropriations Committee of the House, stated last year that it would cost from ten to twelve million dollars to value these minor carriers, and that the commission was willing to go along and do that work at any time the Appropriations Committee would furnish the money. If the commission's estimate is as accurate in regard to valuing these minor carriers as it was in regard to the valuation of steam railroads, the ultimate cost would probably be several times ten or twelve millions dollars, because the ultimate cost for the valuation of steam railroads will be more than thirteen times as much as Senator Elkins said the commission estimated in 1910.

Again I want to say that this is pointed out in no spirit of criticism. This is a tremendously large problem that is being considered, and the purpose of making these statements is to be helpful if possible in arriving at a wise conclusion.

I, therefore, have the feeling that a repeal of section 19a is not only justified under the proposals for changing the principles of rate making and repealing the plan of recapture of excess income, but such repeal of section 19a is a plain necessary economy step on the part of the Government, and surely it would not be attended by any disruption or subversion of the commission's power or activities in connection with its regulatory authority. The repeal of section 19a in the light of the proposals before this committee for a rewriting of section 15a could work no harm to the commission's authority if such repeal is accompanied by a grant of power to the commission to keep in touch with additions and betterments, construction of new line, and so forth. Such repeal of authority would not affect the commission's power under section 20a over the issuance of securities. Neither would it affect the commission's power under section 5 concerning the subject of consolidations. Basic information in respect of the important railroads of the country is now in the commission's hands, and it should be preserved and used wherever necessary in any way the commission deems advisable; but I submit that no useful purpose will be served by a valuation of electric carriers. Not only would it be costly to the Government but it would be more costly to the electric carriers which have no money to spend in this manner, and after the job was completed the information gathered would be practically useless in so far as the commission's work is concerned.

As I have before pointed out, the electric railways are treated in the present provisions of section 15a in such an indefinite way that whether or not they or any of them are in the class of roads subject

to recapture is still undetermined; and this will be true if the recapture provisions are not repealed *ab initio*. Further, in so far as rate making is concerned, the general level of interstate rates could not be affected in the slightest degree by any value that might be assigned to an electric carrier. I want to expand this thought a bit. These electric carriers are, for the most part, short railroads engaged in interstate commerce, very largely on account of through routes and joint rates in effect with trunk line systems. Interstate rate levels are—always have been and always will be—based upon the service and facilities of the trunk line systems. These rate levels are established without regard to the needs of any individual electric carrier, and such carriers must utilize the rates provided or go out of the business. It follows that in no sense can valuation of electric carriers be important in so far as rate making to provide a fair return is concerned, because if the rate level is not compensatory, the only alternative an electric carrier would have is to cancel out its tariffs, if the commission would permit, and go out of the business. Suppose such a carrier were to institute a confiscation case and prove that the rate level was so low as to be confiscatory. What would it avail such a carrier? An increase in the rate level would drive the business to the lower general level of rates provided by competing carriers. Therefore, a confiscation case and finding in favor of an electric carrier would be of no value. In other words, these electric carriers engaged in interstate commerce are controlled by economic forces that preclude any relief from the courts through the institution of confiscation cases in regard to their interstate rate levels. Hence, in the absence of the possibility of successfully raising the question of confiscation, there would appear to be no good purpose served for the commission to be in possession of the values of these electric carriers in connection with the establishment of interstate rates.

In connection with this subject of valuation of electric carriers it should also be pointed out that a great deal of electric railway mileage has been abandoned and taken up since 1920. And, of course, as to this abandoned and discontinued mileage, any moneys spent either by the Government or by the railroads would have been utterly wasted. The process of abandonment and removal has been going on from year to year, not only with electric carriers but with steam railroads as well, especially the short steam railroads and branch lines of the larger steam railroads. I have been unable to secure very accurate data on this subject, but in comparing the annual statistical reports of the Interstate Commerce Commission for electric railways for the years 1924 and 1930, I find the following:

In 1924 there were 273 electric railways shown in the commission's annual statistics. In 1930 there were 195, a decrease of 78. Not all of the electric carriers included in the 78 were abandoned and removed. There have been some consolidations, and in some instances the commission has authorized the discontinuance of reports of certain electric railways on account of the small amount of interstate business reported. For example, there are some rather large street railway operations in this country where a very small amount of interstate business is transacted on a relatively unimportant part of the street railway lines. One street railway company that I know of, with earnings of around \$7,000,000 per year, has a very small interstate operation on a few miles of track, earning in round figures \$150,000

per year. The interstate operation of that urban transportation system is considered by the commission of such small consequence compared to the street railway operation, that the discontinuance of annual reports to the commission has been allowed. I know of several others of a similar kind. So, I say, that not all of the 78 less railroads reporting in 1930 than in 1924 have been scrapped.

There are, however, reported, as between 1924 and 1930, a reduction of 5,275 miles of road operated. In other words, the commission's statistics for 1924 show a total mileage of road reporting of 14,233 as compared to 8,958 in the year 1930. Again it may be stated that not all of this track was abandoned and removed. Some of it, of course, is included in the mileage of those roads that have been relieved from making annual reports to the commission. It may be said, however, that there have been a large number of miles of electric railway abandoned and removed between the years 1920 and 1930, and that the process is continuing. The year 1930 has witnessed a substantial abandonment of electric railway track in the States of Ohio and Indiana, totaling some six or seven hundred miles. I am, of course, speaking of track owned and operated by electric railway companies reporting to the commission. These figures do not take into account the abandonment of street railway mileage which is not under the jurisdiction of the commission. It seems to me that this is an additional persuasive argument for the repeal of the law requiring the commission to value the electric carriers. Certainly a substantial proportion of the figures obtained from such a valuation would become utterly worthless in the course of time by the abandonment and removal of the property that had been valued.

I am prompted by questions that have been propounded to other witnesses during the course of these hearings, to make one further suggestion in regard to this valuation subject. While I can not see any valid objection to the repeal of Section 19a in toto, leaving to the commission the duty of keeping itself informed of additions, improvements, and so forth, as I have already stated, if the committee upon a further study and discussion of this subject comes to the conclusion that the commission's authority over this matter should not be completely removed on account of the possibility of some additional original valuations being required in confiscation cases or in connection with the consolidation subject, it would appear to me to be worth while to think of the matter along the lines of discontinuing valuation after the original valuations that were in progress on January 1, 1932, have been completed, unless in a particular case the commission finds it necessary to go forward, and in such case they would have the right to act. I have, therefore, taken the liberty of drafting a substitute for paragraph (f) of section 3 of H. R. 7117, containing these thoughts. This suggested amendment is to take the place of subparagraph (f) as now contained in the printed bill H. R. 7117, and is as follows:

(f) Upon completion of the original valuations in progress on January 1, 1932, the commission shall discontinue the valuation of carrier property and thereafter shall keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of all such carriers and of the cost of all additions and betterments thereto and of all changes in the investment therein, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories and classifications of the properties: *Provided, however,* The commission, upon application or its own motion, after hearing and a finding that the public interest so requires, may proceed with an

original valuation of any carrier not previously valued, in order to utilize such valuation as evidence in any proceeding in court, and thereafter in any such case shall keep itself informed of all changes in the value of any such carrier in the manner hereinbefore set out.

You will note from this suggested amendment that original valuations in progress on January 1, 1932, are authorized to be completed. From the evidence adduced in this case, all Class I steam railroads have been inventoried, originally, and, as I understand it, a large part if not all of the more important Class II and Class III railroads have also been originally valued. This language would permit a continuance of the original valuations in progress as of January 1, 1932, so that they may be wound up and the results placed in the commission's archives. Following this proposal in the amendment, I have used the language as at present contained in subparagraph (f) so that the commission may keep itself fully informed in so far as additions and betterments and improvements and cost and retirement, and so forth, are concerned.

Then, in an effort to provide the commission with such values as may become necessary in court proceedings, I have drawn language to authorize the commission to proceed with an original valuation whenever it intends to use the results as evidence in court. Further than this, it would seem that valuation could not possibly be necessary. In a confiscation case, if one should come up, which of course, as I have before stated, in my judgment is a most remote possibility, the commission would have authority to use its present valuations as contained in its archives and as modified and amplified by its having kept account of changes in the property of any such carrier involved in the confiscation case. If the case involved in electric carrier not previously valued, the authority would be sufficient for the commission to proceed with an original valuation. This would leave the commission with power and authority sufficient to deal with the valuation subject to the extent necessary to defend its action in court, and it would relieve the taxpayers and the railroads, and the ratepayers of the railroads, of course from the burden of unnecessary valuations.

However, I wish to reiterate that I concur wholly in the recommendation of the steam railroads that section 19a be repealed as a whole, except that the present valuations should be preserved and the commission be authorized to keep up to date on changes in property.

Summing up, I may restate our conclusions briefly as—

1. If rate making upon aggregate value of railway property in groups is to be repealed and the recapture of excess income is also to be repealed, electric railways transacting business in interstate commerce should not be excluded from such a new section 15a.

2. Section 19a should be repealed in toto, and the commission should preserve in its archives all of the records resulting from its work of valuation to date, and should hereafter keep itself informed of changes in property of all carriers.

As an alternative to a complete repeal of section 19a, if there is a sufficient reason to warrant a continuance of governmental expenditure for valuation of railroads and the heavy expense of such valuation to the carriers, as great a limitation should be put upon the future activities of valuation of railroads as is consistent with a comparison of the expense involved to the results that will be obtained.

The CHAIRMAN. Any questions. Does any member desire to ask Mr. Cass any questions?

Mr. MAPES. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. Your proposed amendment to section (f) does not go as far as you really think it should, does it? What you think should be done is to repeal paragraph (f) of section 19a in toto, is it not?

Mr. CASS. No; it does more than merely offer a substitute to repeal 19a in toto.

Mr. MAPES. Is this the effect of your proposal? It would say to the commission that it should never make a valuation of the electric roads, but it would leave the commission free to complete the valuations of all steam roads? That, in effect, is what it does, is it not?

Mr. CASS. No; it does not say that.

Mr. MAPES. I know that it does not say that in that exact language, but is not that the effect of it? As I understand you, you say that the commission has started to make the valuation of practically all steam roads, and your section would allow it to complete a valuation of all roads that it had started to make valuations of. Now, it has not started to make valuations of the electric lines, so that it would seem to me that in effect your proposal would repeal the provision that authorizes the commission to make the valuation of the electric lines but would allow it to go ahead with the valuation of the steam roads.

Mr. CASS. That is correct, except that the commission has authority in any case, after a hearing and a finding that the public interest requires it to go ahead and make a valuation of any carrier subject to its provisions.

Mr. MAPES. So in effect it says that the commission may go ahead and complete valuations of all steam railroads, but leave the electric railroads alone.

Mr. CASS. That is right; but it gives a distinct direction to go ahead and value one at a time, when it is desired.

Mr. MAPES. If in the judgment of the commission that is necessary.

Mr. CASS. That is correct.

Mr. GARBER. Mr. Chairman—

The CHAIRMAN. Mr. Garber—are you through, Mr. Mapes?

Mr. MAPES. Yes.

Mr. GARBER. I have not had the advantage of hearing your paper read through, but I understand that you request the repeal of section 19a; is that correct?

Mr. CASS. That is correct; yes, sir.

Mr. GARBER. Well, now, the bill H. R. 7117, provides for the repeal of subdivision (b) of section 5, which gives the commission power to prohibit the issuance of bonds and securities to a greater amount than the valuation of the roads.

Commissioner Eastman in justification for such repeal, if I recall his testimony correctly, referred to the fourth paragraph of (b) in section 19a as being sufficient to accomplish the same purpose.

Now, you are advocating the repeal of that also.

Mr. CASS. Yes, sir.

Mr. GARBER. Well, what do you offer instead, as a regulation, as a proper regulation of the issuance of securities, of bonds and stocks to protect the public?



Mr. CASS. The commission has that power now, Mr. Garber. The act contains all of that. The commission has the inventories of all of the railroads, railway property, of the United States. Under the uniform system of accounting that has been in the act since 1910, by which the steam railroads, and electric railways, have kept their accounts, have set up all of the additions and betterments, and retirements, that have taken place.

Now, with the basic information contained in the commission's archives, together with the additional information that can be obtained from the bookkeeping that has been done under prescribed methods of the commission, they should have all of the information necessary under which to predicate every move in regard to consolidations.

Mr. GARBER. And these sections about to be repealed will not be necessary for the regulation of the issuance of securities or bonds, in your opinion?

Mr. CASS. I do not say that, because if the valuation had not been in the acts up to now, no valuation would have taken place if 19a had not been passed in 1913.

Mr. GARBER. You think that such valuation could be utilized as a future protection?

Mr. CASS. I should say that it could be utilized in the future as in the past, on which the commission should exercise sound discretion in the matter of consolidation.

Mr. GARBER. Do you recall the provisions of paragraph 4 of (b)?

Mr. CASS. Of section 19a; you are speaking of paragraph 4 of (b) of 19a.

Mr. GARBER. Giving the commission full information at all times of all moneys received by reason of the issuance of "stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made, and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the commission upon the expenditures of all moneys and the purposes for which the same were expended."

Mr. CASS. I think that you will find the substance of that under the complete control of the commission, Mr. Garber, in section 20a. The commission's control over the issuance of securities of steam roads is plenary. They can not do anything with regard to the issuance of securities that the commission does not direct.

Mr. GARBER. I believe that is all.

The CHAIRMAN. All right, Mr. Cass.

Mr. CASS. May I take just a couple of minutes more to call attention to one or two things that I overlooked. I do not want to encroach upon the time of the other witnesses. You said I could have an hour, Mr. Chairman.

The CHAIRMAN. Go ahead. I will stand by what I said.

Mr. CASS. There have been several questions raised by members of the committee in regard to wiping out, by a repeal of the recapture section, this great leveling process that was supposed to ensue, from a contingent fund, set up from the recapture of excess earnings and I think it was Congressman Hoch that wondered whether or not that would be in the public interest, or in substance, that is what he said.

I wanted to call attention to the fact that there is another thing in the statute, a provision, that has not been utilized very extensively,

a matter that Colonel Thom spoke of the other day, very shortly, and that is the matter of division of through rates.

The commission has, in subparagraph 6 of section, 15 very wide authority over the division of money earned on joint rates.

I would like to read this language to you, because I think it is pertinent to the question as to how it would be possible to utilize some of the excess earnings of the strong railroads to help the unfortunate or weak railroads.

I am reading from the last paragraph of subparagraph 6 of section 15:

In so prescribing and determining the divisions of joint rates, fares, and charges, the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation service of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.

Now, properly utilized by the Interstate Commerce Commission, that very provision would be a great help in leveling off the peaks of excess earnings of very strong railroads.

The question has been passed on by the Supreme Court in several cases. It was originally determined in the New England Division case, and the limitation that the Supreme Court set upon the commission in its right to divide the money between the railroads, is that it must leave enough money in the hands of the railroad to keep it from being confiscated.

Colonel Thom made that statement the other day. I want to emphasize that again. I say that the only limitation that there is confronting the commission on the question of dividing the earnings on joint rates is the proposition that you can not take so much away as to confiscate the property of a railroad.

Now, may I suggest an example. This is purely an extreme example, for the purpose of illustration: The Wabash Railroad is in the hands of a receiver. You were told yesterday, or day before, by Commissioner Eastman, that the Bessemer & Lake Erie was declaring 150 per cent dividends or more, and now it probably is true that the earnings of the Bessemer & Lake Erie are above a fair return. I am not saying it is true, but it may be true.

Now, on a shipment originating on the Wabash, destined to some point on the Bessemer & Lake Erie, the commission would have the right to divide a joint rate between those two railroads, the substance of which would go to the Wabash, which needed it and be taken away from the Bessemer & Lake Erie, which is earning an excess return.

Now, that principle has been followed through in several Supreme Court decisions. If you are interested in those decisions and want to follow them, they can be put in the record, or I can read them in.

The CHAIRMAN. We will be very glad to have you put them in.

(The decisions above referred to are as follows:)

New England Divisions case (261 U. S. 184).

U. S. v. Abilene & Southern (265 U. S. 274).

Brimstone R. & Canal Co. v. U. S. (276 U. S. 104).

Beaumont S. L. & W. Ry. Co. v. U. S. (282 U. S. 74).

Mr. HOCH. Your view of that is that the commission has power in dividing a through rate between carriers to increase the proportion to one carrier solely on the ground of the financial condition of that carrier, leaving out of it entirely the question of the cost of the service, the service rendered by the different carriers, and settling it solely upon the question of the financial condition of the two carriers?

Mr. CASS. Let me read a quotation in answer to that question, Mr. Hoch, from *U. S. v. Abilene & Southern* (265 U. S. 264).

In determining division of joint rates the Interstate Commerce Commission may, in the public interest, consider the financial needs of a weaker road and give a division larger than justice merely as between the parties would suggest in order to maintain it in effective operation as a part of an adequate transportation system, provided, it shall leave to its connections, an adequate amount to avoid a confiscatory result.

Mr. HUDDLESTON. May I ask whether, in suggesting confiscation, it is held—

Mr. CASS. I beg your pardon.

Mr. HUDDLESTON. Whether the carrier has left we will say, anything above a fair return.

Mr. CASS. I do not think that that direct question has ever been passed upon, but I can not see how the Supreme Court could say that the balance of a rate would be confiscatory, if in fact it was not confiscatory.

Mr. HUDDLESTON. The point at issue is whether the particular rate must yield the carrier a fair return, or whether the carrier must receive a fair return from all business.

Mr. CASS. If the carrier was receiving a fair return on the property used in the public service, my slant on that, Mr. Huddleston, would be that the particular rate could not be changed on the ground that it was confiscatory.

Mr. HUDDLESTON. In short, the carrier could be required to render a gratis service.

Mr. CASS. Well, as an extreme example; yes.

Mr. HUDDLESTON. That may be the law, but I do not believe that it is.

Mr. CASS. I am not saying it is the law, but that is an extreme example. It probably has not been passed upon, but certainly in the division of the rates on the Supreme Court's basis, that could be done.

Mr. HUDDLESTON. I do not see how you can reason, that a carrier is not entitled to a fair return from the particular rate.

It seems to me to be confiscation if a rate is fixed so low that the carrier can not get a profit out of it.

Mr. CASS. In answer to that, if the carrier was earning a fair return and it would earn an additional return on the rate that was not divided to suit, then it would be earning above a fair return.

Mr. HUDDLESTON. To apply that principle, let us say that all of the traffic received by the Bessemer & Lake Erie is from other carriers and that each of these carriers could proceed to the commission and get a gratis service out of the Bessemer & Lake Erie, until you got around to the last one which would be deprived of this benefit, because it happened to ask for it after the others had gotten their division.

Mr. CASS. No; I think that that is a more extreme illustration than the one that I gave.

Mr. HUDDLESTON. I am trying to test the principal by an extreme illustration.

Mr. CASS. I think that the element of reasonableness would enter into that-somewhere, but certainly the point that I am trying to make by these extreme illustrations is that the commission does have a right to divide the rates between the railroads in such a manner as to take from the excessive earnings of one and give to the other.

Mr. HUDDLESTON. Each carrier would get a slice of what otherwise would go to the Bessemer & Lake Erie until they got around to the last one, and when it asked for its slice the commission would say that it could not have it because it would be confiscatory—because the Bessemer & Lake Erie would be deprived of a fair return—and then the commission would have to go back and take away from these connecting carriers that which they had previously been given. They would have to make readjustments.

Mr. CASS. That would be one method, readjust it so that everybody would get a share.

I want to pass from that quickly to a matter that occurred to me yesterday.

The CHAIRMAN. Now, Mr. Cass, we have to hear three other witnesses.

Mr. CASS (continuing). And that is whether or not the receiverships and foreclosures of railroads that are in the estimated recapture class would extinguish the Government claims, and I have made a very cursory examination of it, and I think the priority specified in the statute for Government claims would not apply as against mortgage holders under foreclosure.

The CHAIRMAN. We are very much obliged to you, Mr. Cass.

Mr. CASS. Thank you.

**STATEMENT OF FRED N. OLIVER, GENERAL COUNSEL SECURITY OWNERS' ASSOCIATION (NATIONAL ASSOCIATION OF OWNERS OF RAILROAD AND PUBLIC UTILITIES SECURITIES (INC.)), MILLS BUILDING, WASHINGTON, D. C.**

The CHAIRMAN. Mr. Oliver, you are recognized for 15 minutes.

Mr. OLIVER. Mr. Chairman, I am general counsel for the Security Owners' Association. I shall deal as much as possible in the 15 minutes allowed to me with the rate-making section, and Mr. Dempsey will follow me and he will deal with repeal of the recapture provision.

The CHAIRMAN. What section is that?

Mr. OLIVER. The rate-making section, section 15a.

Mr. Dempsey will follow me and will deal briefly with the retroactive repeal of the recapture provision.

The CHAIRMAN. You gentlemen who are not able to get all of your statements in may put them in the record.

Mr. OLIVER. As if read?

The CHAIRMAN. Yes.

Mr. OLIVER. I shall abridge my statement in the interest of time.

The Security Owners Association was organized in 1917, nearly 15 years ago, as the National Association of Owners of Railroad Securities; it has continued through its existence to be actively interested in the protection of the credit of the railroads as a whole. Through its

direct membership it represents a large proportion of the outstanding securities of the American railways. Included in its membership are mutual institutions of a public or quasi-public nature, such as many of the insurance companies and savings banks, which hold for permanent investment railroad securities amounting in the aggregate to several billions of dollars. While it is difficult, due to fluctuating conditions, to give the exact amount of the holdings of these institutions, it was estimated during the recent Fifteen Per Cent case that they held about five billions of the approximately eleven billions of railroad bonds outstanding. The association's membership also includes other large institutional holders of railroad securities, such as banks and trust companies acting in a fiduciary capacity, universities, hospitals, charitable organizations, as well as many individual security holders, numbering in all about 10,000.

The association's membership consists wholly of investors—bond holders—though, of course, many of its members are also stockholders; its membership extends to every State in the Union.

We wish to have it distinctly understood that the association does not represent the houses of issue, the sellers of securities or the banking houses whose business it is to finance directly the security issues of railroads. In other words, we do not represent and we do not assume to present the viewpoint of Wall Street.

All of the assets of mutual organizations, whether insurance companies or savings banks, are held for the benefit of their patrons. They have no stockholders. The interest of this class of investors in railroad securities is, therefore, very closely akin to the public interest, for the reason that those securities in large part protect the savings deposits and life insurance policies of many millions of people.

For many years railroad bonds were considered as being next to Government bonds in safety and soundness. Unfortunate and unprecedented conditions at present have depressed those bonds to extremely low levels, but under proper guidance and encouragement we feel they will return to their former status. There are three causes which stand out as being principally responsible for the present railroad situation. The first, of course, is the economic depression. The second is unrestrained and unregulated competition, and the third, in our opinion, is restrictive legislation and regulation. It is one phase of the latter that the committee is inquiring into in this proceeding.

Commissioner Eastman has told you that the association was largely responsible for the enactment of section 15a, and in this he was entirely correct. It is not necessary to recite conditions prevailing prior to and during 1919 because undoubtedly they are well known to the committee. The owners of railroad securities had lost confidence in the integrity of railroad investments. The railroads were in poor physical condition following the war and Congress realized that if private operations were to be resumed it was essential that the railroads should be assured a continuous flow of capital from investors sufficient to enable them to improve and expand their properties. In no other way could the railroads render adequate service and take care of the growing transportation needs of the country.

Section 15a was devised for the purpose of restoring the confidence of the public in railroad investments, or in other words, or restoring railroad credit. It was believed that by assuring the railroads a fair

return investors would once more direct their funds into the railroad industry.

It may be said that the railroads have expanded sufficiently to take care of transportation needs for years to come, and that, therefore, railroad credit is not such a serious matter for the immediate future. This overlooks the important fact that the immediate future may hold in store marked change in the manner in which transportation is conducted. We have reference to the feeling now entertained by many railroad executives and others that competition from other transportation agencies will require large expenditures for rearrangements of terminal facilities, may require, to some extent, different types and kinds of equipment, and many other changes which can not at the present time be foreseen. This is in addition to the moneys needed currently to take care of existing obligations as they mature.

The committee may probably be interested in knowing that the funded indebtedness during the period 1932 to 1936, a period of five years is in excess of \$1,417,000,000. The figures are: \$181,082,019 in 1932; \$295,182,492 in 1933; \$370,604,285 in 1934; \$207,299,611 in 1935; and \$363,790,190 in 1936; or a total of \$1,417,958,597.

It is, therefore, important that, if the railroads are to continue to operate successfully in competition with other forms of transportation, they have sufficient credit to enable them to receive needed capital from regular sources. The situation requires the same constructive treatment as in 1919 to enable the railroads to function on a wholesome basis.

Taken as a whole, section 15a has undoubtedly served a useful purpose during the time it has been on the statute books. By giving the commission a definite yardstick by which to measure or test the reasonableness of the rate level and by giving the commission specific instructions respecting a fair return, it went far to restore the confidence of investors in railroad securities and made possible successful operations under private ownership. Prior to the war there had been no affirmative duty imposed upon the commission to observe the general rate level and to so adjust this level that the railroads would earn a fair return. In large measure, therefore section 15a was responsible for the resumption of the flow of capital into the railroad industry. Large amounts of new money were turned over to the railroads by investors in addition to the large amounts used in refunding maturing obligations during that period.

In our opinion, the rate making provisions, however, have failed to accomplish the purpose for which they were enacted. During the period from 1923 to 1929, railroad credit was apparently good, but during this entire time when shippers could afford to pay liberal rates the rates of return was limited. The law seemed to contemplate that every year should be considered separately and that nothing in excess of a fair return could be earned during the years of relative prosperity to take care of the inevitable period of economic depression which would follow. Due to the depression the railroads, earnings in 1930 and 1931 fell off greatly and in 1931 it appeared that many of the roads would not earn sufficient to pay their fixed charges. Bonds of sound roads were likely to come off of the list of legal investments for savings banks.

In June, 1931, the roads asked for an increase in rates saying that as they were held down to a fair return or less during the prosperous years they should in all equity receive a fair return during periods of



depression. The commission found that a general increase in rates might not produce additional revenues and might, in fact, tend to interfere with the movement of traffic or divert it to competing agencies so that the carriers would earn even less than under the existing rates. In other words, the commission found that the proposition of giving to the carriers a definite rate of return each year separately was unsound economically and could not be administered. This accounts, as we understand it, for the very suggestion in both H. R. 7116 and 7117 that the commission shall so regulate rates that the carriers over a period of years may earn sufficient to maintain an efficient transportation system.

Taking up first the rate making provisions of H. R. 7117, this bill amended in paragraph (4) as proposed by Colonel Thom and Mr. Fulbright calling for retroactive repeal of recapture, is the bill favored by security owners and is the one to which we shall confine our discussion. The security owners urge the committee to accept rate making provisions similar to those contained in H. R. 7117. We are not urging that the identical language be used, but that some general rate making rule be adopted which will direct the commission to give consideration, in the fixing of rates, to the rate structure as a whole and financial needs of the carriers.

Some question has been raised about the need for a rate making rule in addition to the rule contained in section 1 of the act requiring just and reasonable rates. It has been suggested that the matter of making rates should be left entirely to the discretion of the commission, with only the simple rule of section 1 as a guide. In our opinion the rule in section 1 is inadequate to meet the situation. Section 1 refers to individual rates—rates on sand, gravel, coal, and so forth; it has no reference whatever to the general level of rates. In considering the justness and reasonableness of a rate under section 1, the commission, generally speaking, observes that one rate only. In other words, it applies the magnifying glass to one minute portion of the great body of rates, and determines whether or not that portion stands the tests of justness and reasonableness. It does not view the rate level as a whole; it does not determine that the particular portion under scrutiny is compensatory, except in a very general way. If the rate fits into the general network of rates, the commission might well find it just and reasonable under section 1.

If the commission is testing a single rate on one commodity to one specific point its primary object is to ascertain whether that particular single rate compares favorably with other rates on the same commodity in that same territory. In other words, whether the particular rate is higher or lower as the case may be than the general rate level of that particular commodity. In testing the justness and reasonableness of all rates on a particular commodity in a given section or territory the commission would find out whether or not that commodity is bearing more than its just share of the transportation burden. In so doing it compares the earnings of the rates on this commodity with earnings on rates of similar or other commodities in the same and other territories. It gives consideration to numerous matters such as its value, its average loading, etc. In making this determination no consideration is given to whether or not the rate level as a whole produces to the carrier the proper amount of aggregate revenue.

In applying the provisions of section 1, it has been held that where the measure of a specific rate, or rates on a specific commodity, is in

question it is improper to take into consideration the results of all operations on even one railroad.

Mr. NELSON. Will you insert in the record the book and the page of the decisions in which that has been held?

Mr. OLIVER. Yes, sir; I shall be glad to do that.

In *Bananas from Gulf Ports* (109 I. C. C. 211, p. 219), is the following:

To four destination points represented at the hearing, the protestants estimated that the annual increase in revenue which would be produced by the proposed rates would be as follows: Atlanta, \$11,693, Charleston, \$11,200, Nashville, \$14,300, and Jacksonville, \$35,000. Protestants insist that the respondents are not in need of this additional revenue, and introduced evidence to show increased prosperity of the southern carriers. Such evidence is of little or no force in determining the propriety of the rate level on an individual commodity. *Dayton-Goose Creek Ry. v. U. S.*, 263 U. S. 456, 482.

A like question arose in *Roquemore Gravel Co. v. A. & W. P. R. R. Co.* (126 I. C. C. 575). The following is from page 577 of the report:

The fact that the defendants may be prosperous, as complainant contends, and that sand and gravel constitute a large part of the traffic transported over their lines, does not prove that complainant paid unreasonable rates on its shipments. The prosperity of a carrier is the result of many causes. Were we to consider the earnings of the defendant carriers in passing on the measure of the rates on a single commodity between two points on their lines, as complainant seeks to have us do, there could be no uniformity in rates. In fact, rates between the same points would vary with the routes between these points.

As indicated in one of the above quotations from the commission cases, the Supreme Court has considered the same general principle in connection with somewhat different situations. The citation in the commission report is of the *Dayton-Goose Creek* case.

In *Interstate Commerce Commission v. Union P. T. Co.* (222 U. S. 541), the court said:

Where the rates as a whole are under consideration, there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article.

In *Northern Pacific Railway Co. v. North Dakota*, ex rel. McCue (236 U. S. 585), it was held that an unreasonably low State rate on coal can not be justified on the theory that the return from all of the intrastate rates was reasonable and adequate. The court said:

In such a case, it would be no answer to say that the carrier obtains from its entire intrastate business a return as to the sufficiency of which in the aggregate it is not entitled to complain.

Of course, the objection would be all the stronger if it should be proposed to take into consideration the results from all the operations of all the railroads, or of all railroads in a rate group. In other words, in construing section 1 the courts have ruled out considerations of the general welfare of the railroads.

We do not assume to define the process of reasoning of the commission nor that the commission always confines its considerations to the elements we have mentioned. The point is that the rule under section 1 refers to individual rates and not to the rate structure as a whole. It is conceivable that each and every rate in the whole rate

structure might be viewed separately and found to be just and reasonable under section 1 and yet the rate level as a whole might be too low to sustain the carriers and attract capital to take care of their needs.

It seems to the security owners that a declaration of policy from Congress is essential when consideration is given to the general rate level. If section 15a is repealed and only the general rule that rates shall be just and reasonable is given to the commission as a guide, the situation will be the same as it was prior to 1920. At that time there was some doubt among the members of the commission themselves as to what, if any, consideration should be given to the revenue condition of the carriers. The rate-making section of the old act was written around the individual rate. It did not tend to encourage consideration of the effect of those rates in their aggregate upon the individual carriers or upon the carriers as a whole.

Certain members of the commission had objected to consideration of the necessity for any general increase in revenue until the proposed advances had been allocated to specific rates or items and filed for scrutiny as to their reasonableness per se. It was claimed in the general proceedings prior to 1920 that the necessities of the carriers had never been regarded as a test for determining the reasonableness of a rate structure, and that each transportation service should be considered separately without any relation to the results in the aggregate or to transportation as a whole. The aggregate result might constitute an excessive return or it might be so inadequate as to destroy the credit of the carriers, but until 1920 the act placed on the commission no direct responsibility for reviewing the problem from any broader standpoint than of the reasonableness of the individual rates.

Even in the latest general increase case prior to the war, the Fifteen Per Cent case of 1917, there was a division of opinion among the commission as to the propriety under the law of looking at the matter from a broad viewpoint as to the revenue needs of the carriers and the necessity for general relief. It seemed to be the feeling on the part of some of the commission at least that such a question was one exclusively for Congress and not for the commission to handle. Commissioner McChord stated that feeling in the following words:

The issue presented is in reality one largely of governmental policy rather than a question whether the rates sought to be made effective July 1 are reasonable for the service of transportation.

There is another strong factor which in our opinion requires some affirmative duty imposed on the commission as to the general rate level; there is needed an effective provision for control by the Interstate Commerce Commission of the relationship of the intrastate to the interstate rate structure based upon carrier revenue. There may be a division of opinion among lawyers as to whether or not without some such general provision the commission would have power to require the State rates to bear their proportion of the transportation burden. In our opinion, however, the elimination of any general rule might render ineffective Federal control. It is doubtful whether section 13 standing alone would furnish sufficient power to the commission to remove the broad discrimination against interstate commerce without some revenue provision in section 15a. It has always seemed to us that the Supreme Court in the Wisconsin Pas-

senger Fare case (257 U. S. 563), recognized the intention of Congress that the revenue necessities of the carrier should be regarded as one of the main purposes of the transportation act and that these necessities could not be protected from a national viewpoint unless burdensome state rate structures were harmonized with interstate rate structures. In other words, the two sections construed together gave to the commission the power to prevent this broad discrimination based primarily upon the affirmative duty of the commission to maintain a national transportation system.

Taking up the specific provisions of paragraph (2) of H. R. 7117, there are in fact four elements there enumerated and all of them proper elements. The fourth element is to the effect that the carriers can not expect to earn during times of depression a full fair return but that the rate level should produce over a reasonable period of years revenues consistent with the standards set forth. This is an important element in the proposed bill, and is in effect a restriction against the carriers. The third clause is also a restriction, according to our interpretation. It simply says that the rates must be no higher than necessary to provide adequate transportation service. These are clearly two restrictive factors to be considered. Clause 1 may be interpreted to mean that the commission may consider the need for further expansion in facilities or whether the transportation system is already overexpanded. Clause 2, providing that the credit of the carriers shall be sufficient to attract the capital to provide for their needs is the only clause which recognizes the fundamental principle that, if the carriers are to continue to operate successfully under private ownership, they must have adequate funds with which to operate.

It has been said that the commission would take into consideration these elements whether they appeared in the law or not. It should be remembered that there is a continually changing personnel of the commission. The viewpoint of the present commission may not be the viewpoint of the commission of to-morrow. While the present commission may, as Commissioner Eastman stated, consider these elements in determining the propriety of the rate level, the wiser course would seem to indicate that express directions be given to the commission. The investors would be assured of a standard which would not vary with changes in commission personnel.

We think it is obvious that from a practical standpoint the constitutional right of the carriers to a fair return is no protection to the carriers as a whole so long as the present inequality or lack of uniformity of earnings among carriers prevails.

The constitutional right is a matter for each individual carrier. Theoretically, even the weak carriers are entitled constitutionally to earn a fair return. But, as a practical matter, no matter what level of rates they might obtain by court process they could not maintain for competitive reasons any higher level than the schedule of rates for the strongest carriers. Therefore, we say, that as a practical matter the constitutional right to a fair return is only beneficial when the rate level has been depressed to the point where even the most prosperous carriers in the same territory earn less than a fair return.

In so far as any constitutional right is concerned, the commission could, if it so desired, depress the rate level to the point where only

the most prosperous carriers in a given rate group would earn a fair return. The only safe procedure would be for Congress to direct the commission as to the manner in which it shall adjust the general rate level. Under present conditions, it would seem unfortunate if Congress should repeal the rate-making provisions of section 15a without replacing them with some substitute. It might appear to investors that Congress would thus be withdrawing all assurances that the rate level would be maintained at a point sufficient to maintain the safety and integrity of investments and insure a continued inflow of capital. The shippers are protected from excessive rates, from discrimination and prejudice, yet the removal of the rate-making rule would leave no safeguard so far as investors are concerned.

If the ability to attract capital is an element to be taken into account when determining the propriety of the general rate level, we can not understand the hesitancy toward inserting this element into a declaration of policy. Congress could pass a consolidation bill containing one sentence to the effect that the commission shall have power to authorize consolidations and the commission might authorize consolidations in much the same manner as it can under the present section 5, and might take into consideration the various elements enumerated therein. Congress places specific detailed instructions in the various laws apparently because it wishes those instructions to guide the commission in its disposition of matters coming before it. We can not see what objection there could be to giving instructions to the commission as to how the rate level should be determined. If Congress feels it is necessary to go into detail with respect to certain parts of the act, it would seem that it should at least make a general declaration of policy respecting the most important part of the act so far as the investors are concerned, namely, the provisions dealing with the adequacy of the rate level.

There is another important principle which in our opinion should be a little more clearly set forth in H. R. 7117. The necessity for grouping the carriers and the fixation of rates at a level necessary to sustain the group is extremely important and is the basic principle of section 15a. While such a grouping may be implied in the language in line 2, page 3, "a general level of rates," it is not specifically provided for. Grouping is essential if the national transportation system is to be maintained and probably would be followed by the commission even without specific instructions.

Referring to the proposed substitute for section 2 of H. R. 7117, offered by Commissioner Eastman, we strongly urge that the phrase with reference to credit should be permitted to remain in the section and the provision for grouping should be inserted for the reasons that we have already indicated. Otherwise, we think Commissioner Eastman's suggestions are an improvement over section 2 as now drafted. His substitute amended as suggested by us is set out as follows, with our amendments italicized.

(2) In the exercise of its power to prescribe just and reasonable rates for the carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate), the commission shall give due consideration, among other things, to the present and prospective needs of the public for adequate and efficient transportation facilities and service, to the effect of rates on the movement of traffic, to the necessity, in the public interest, for the carriers to be able to establish and maintain a sufficient credit to attract the capital required to meet and provide for such transportation needs, and to the necessity, in the public interest, that the carriers furnish transportation service at the

lowest rates consistent with adequate service and adequate provision for the transportation needs of the public. The fact that revenues fall with decreasing traffic in times of economic depression or rise with increasing traffic in times of economic prosperity shall not necessarily be regarded as a reason for increasing or reducing rates, as the case may be; but it is hereby declared the duty of the commission to exercise its authority over rates to the end that, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment and over a reasonable period of years, constitute a sufficient basis for the maintenance of a national system of railway transportation at all times adequate to the needs of the public: *Provided*, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

In other words, in fixing a general rate level the commission probably would attempt to treat the situation on the average or, stated differently, recognize the national character of railroad transportation. The statute should prescribe with certainty, however, the exact manner in which the commission should approach the problem. It is impossible for the commission to adjust a competitive rate structure to the circumstances of each individual carrier and must treat as one road the different railway systems in a particular group. The commission needs a guide if for no other reason than to justify its action. If it establishes rates to meet average conditions the result may produce relatively high incomes for some roads until such time as the commission may correct the situation by divisions, etc. The public will point out these instances and criticize the commission, not understanding the difficulties of adjusting the rates. As a matter of fact in one of the general rate cases prior to 1920 the commission denied full relief based partly on the proposition that the admitted necessities of certain roads could not justify its action because unwarranted by conditions of a number of strong roads.

Just a few words concerning the much debated question of valuation. The security owners favor the commission's proposal as contained in H. R. 7117. As we understand it, the commission in H. R. 7117 does not propose to repeal section 19a but merely to amend paragraph (f). This would mean that the primary valuations for the steam carriers under section 19a would be completed and preserved but the commission would not be required in the future to make detailed revaluations over and over again. The commission would require the carriers, however, to furnish information as to property changes and the commission would check these returns and determine whether they are accurate so that if it ever becomes necessary in the future, it will have data to make a valuation without a tremendous amount of work and expense.

In other words at all times it would have a current inventory covering the actual properties in existence and in use at a particular time. The task of furnishing to the commission annually the changes in property should not be extremely difficult nor expensive. It would seem to us that well managed carriers would want for their own purposes to know what property they have and would for their own purposes necessarily keep account of property changes. Consequently while such expense may be and usually is included as valuation expense it would not all be an extra expense over that incurred by the carriers in the normal course of their business.

The Security Owners Association is in full agreement with Mr. Bledsoe in that section 19a, paragraph (f) should be amended to relieve the carriers from all burdensome requirements and thus



eliminating any unnecessary expense by requiring them to report additions and betterments in complete inventory form, believing it would be sufficient that these matters be covered in accounting form which is less expensive and less burdensome.

Our approval of the amendment to section 19a contained in H. R. 7117 is based on the understanding that the commission will not make any further revaluations other than to complete the 10 primary valuations as of 1914 not yet issued, and will confine itself in the future to keeping itself informed as to property changes. If the commission proposes to go through the same process of grinding out new primary valuations for each of the carriers because the Supreme Court in the O'Fallon case said the valuation principles were wrong, or if the commission proposes to make new valuations for all carriers for 1927 or some other date even though the law is amended as proposed, the Security Owners Association in that event would be opposed to the amendment and would urge the adoption of Colonel Thom's suggestion as to repeal and substitute.

We have heard the statement made repeatedly that primary valuations are far from complete. While the commission is best able to state that situation, we understand that the contrary is true, and that substantially all of the detail work for the steam carriers was completed about two years ago and that hearings have been had where the carriers were given an opportunity to protest, and that the principal work remaining to be done is to put into final reports the results of these investigations.

The commission has built up voluminous and complete files covering the possessions of each and every railroad in the country. To discontinue reporting of property changes at this time would practically mean the scrapping and throwing into discard of this work. If it can be preserved and kept up to date by annual changes in inventory without too large an expense it seems to us that this would be the desirable thing to do. As to the usefulness of it, we can not conceive that a security issue would be approved by the commission without some idea of the value of the property on which issues are being placed. It has been suggested that when such an occasion arises the commission should make an independent investigation but we are inclined to believe that this is not practicable. Considerable time is required to obtain and assemble the data and in the meantime the application is being held up. In such cases the carriers might be the first to complain because they usually want immediate authority to issue securities to take advantage of some favorable market condition.

The statement is made, however, that since economic laws are alone responsible for the amount of freight charges which can be assessed the valuations are of no use in the fixing of rates. This is true in so far as it relates to individual rates. When a specific rate on a specific commodity between two or more points is being fixed the commission does not consider the value of the property. We are not so sure that this statement is absolutely accurate when it comes to the rate level as a whole. It is true that the commission can not as an economic proposition fix rates so that there will be a precise rate of return earned each year upon the value of the property. But in considering the general level of rates over a long period it would seem to us that there must of necessity be some relationship to a fair return

on the value. There at least should be some general idea of the value of the properties and there should at least be some relationship between the earnings of the carriers and a fair return upon that value.

We agree with the conclusions and recommendations of those who have preceded us respecting the retroactive repeal of recapture, although we do not agree altogether with everything that has been said in that connection. In so far as the future is concerned, there seems to be no doubt about the necessity for repeal. As Commissioner Eastman has indicated, assuming that there did at one time appear to exist a need for recapture, this need is no longer apparent. Consolidations will go a long way toward removing the weak-road problem and the commission possesses other powers which it can and probably will exercise in the future to remove any remaining inequality of earnings. The only question seems to be with respect to retroactive repeal.

We should like to summarize briefly the most compelling reasons for retroactive repeal. Most of these reasons have been given by others who appeared before us and we shall touch upon them only very briefly.

1. Although the rate-making provisions of section 15a did restore investor confidence, such confidence was based entirely upon the belief that the railroads as a whole would be permitted to receive the fair return specified in the statute. The fact is, however, that the railroads as a whole have not earned the fair return during the period subsequent to 1920. Whatever may be the reason for this, it would appear that, not having received the advantages seemingly assured by the rate-making provisions, it would be unjust and inequitable to enforce the disadvantageous portion, namely, the recapture provisions, for the same period.

2. Even assuming recapture to be theoretically sound, the commission has stated (and it is the best judge of the fact), that it is impracticable of administration. No matter how good a provision may be in theory, if it can not be administered it should be repealed. Much time, expense and effort would be involved in any attempt to enforce recapture collections, endless litigation would attend such attempts, and it is doubtful whether the results obtained would be worth the long years of effort and the expense involved.

3. Even from a theoretical standpoint, the recapture provisions are unsound because they provide for the testing of the recapture status by the results of single years, rather than by periods of years, and this is particularly inequitable and unjust. Railroads are very sensitive to changing industrial conditions in the territories in which they operate, and are susceptible to violent fluctuations in traffic and earnings. This fact evidently was not given full consideration at the time the section was enacted. Roads may have one prosperous year during a period of lean years yet would be subject to recapture for that one year despite the lean years in which they might have suffered deficits. The inequity of this principle is specifically recognized in both H. R. 7116 and H. R. 7117, where it is proposed that results from the level of rates be considered over a period of years.

4. Although the law is designed to take from the strong for the benefit of the weak, it can not possibly operate and has not operated that way. This was clearly pointed out by Commissioner Eastman.

Some roads are strong because they are undercapitalized or have valuable resources apart from their railroad properties. Others are weak because they are overcapitalized or have outside investments which operate as a drain upon them, yet their managements must seek to make the best possible earning showings. Sometimes this is done to the detriment of the property through failure to spend adequate sums for maintenance. The recapture laws recognize no such differences in conditions since earnings are determined by property values and not capitalization, and the recapture status is determined by net railway operating income regardless of other sources of or drains upon income.

5. While the law was designed to help the weak roads, there is no practical way in which the funds secured through recapture can be used for that purpose. Adequate security must be given, and if that term is to be interpreted as it is understood by investors, this is usually impossible in the case of weak roads. Most of the underlying bond issues are closed and funds can be raised only by the issuance of junior securities, which in the case of weak roads are of doubtful value from the standpoint of "adequate security." Moreover, the interest rate is 6 per cent, and roads that can furnish adequate security can usually obtain funds at a lesser rate of interest from other sources.

6. It would be difficult and in many cases impossible for the railroads to pay back recapture. Few if any railroads have sufficient cash on hand to meet such demands and still fewer could do so without "robbing Peter to pay Paul," as was stated by Commissioner Eastman. To obtain the necessary cash it would, for the most part, be necessary for roads to issue securities to replenish their treasuries. Few, if indeed any, of the roads are now or will within the near future be able to issue securities on reasonable terms. The railroads may have to borrow from the Reconstruction Finance Corporation to meet imperative existing obligations, and it would seem anomalous for the Government, through one agency, to require recapture payments, and through another agency, to furnish funds with which to meet other pressing obligations.

7. Railroads will need to the utmost in years to come the credit they now have for other and more useful purposes. The depression has been harmful to all the roads; all of them are suffering from the current situation, and no one can prophesy with any reasonable degree of accuracy how long this condition will continue. While we feel sure that traffic and earnings ultimately will be restored, railroads have a hard fight ahead of them because a revival of their credit depends not only upon a restoration of business conditions but also upon their ability to cope successfully with competing forms of transportation.

It is obvious, therefore, that the roads will need their entire credit to raise moneys needed to take care of maturing obligations in the future and to keep the transportation machine in an efficient operating condition, or to revamp it in order to compete successfully with other transportation agencies, rather than to raise cash to pay alleged excess income of the past, particularly since in most cases fair earnings in a few prosperous years were more than offset by income deficiencies of other years.

8. An important point is that this undetermined recapture liability is having a detrimental effect upon railroad credit at a time when credit

is already impaired and when railroads are having difficulty in weathering through.

While it is difficult to appraise the effect this undetermined recapture liability has had on investors in the past, it is obvious that this contingent liability will have a decided effect upon purchasers of securities in the future. Unless repealed, recapture will be looked upon as an indebtedness, even though of an undetermined amount, which must be taken into consideration in figuring the safety of future railroad investments.

9. We think it is no exaggeration to say that the present attitude of investors toward railroad investments is unfavorable. Institutional investors of the class we have mentioned are primarily interested in investments which are safe and marketable. Safety is essential to the protection of the funds which they hold as fiduciaries and marketability at all times is necessary for the purpose of raising funds immediately to meet demands. It is safe to say that the lack of confidence in railroad investments is as great to-day, if indeed it is not greater, than it was at the time section 15a was enacted. It seems absolutely essential that everything possible be done to restore the confidence of investors.

Retroactive repeal of recapture would, without a doubt, go far toward restoring investor confidence and aiding in the reestablishment of railroad credit. We sincerely hope the committee will accept the amendment suggested by Mr. Thom and Mr. Fulbright which embodies the recommendations of the commission and which is proposed to take the place of the present paragraph (4) of H. R. 7117 calling for a retroactive repeal.

It has been suggested that in applying the recapture clause for the past the earnings for the entire period from 1920 through 1931 be averaged and that the recapture status of a road be tested by this period average.

There are certain very practical matters which must be taken into consideration and these, in our opinion, are sufficient reasons to abandon such procedure and apply the repeal retroactively without modification.

In the first place, the roads which would still be in the recapture class after averaging the period would be most prosperous and the best able to secure a court review of the very important principles involved. The number of these principles plus the natural reluctance to part with cash, would probably keep the matter in litigation for years to come. The managers of these properties must fulfill the trust imposed on them by the owners and this would include the defending of such suits to the courts of the last resort. Commissioner Eastman and Mr. Benton claimed that this would result in the establishment of questionable principles of regulation which would adversely affect regulation in general for years to come.

Commissioner Eastman and other witnesses have told you that the fund under the present law is not usable. Of course, Congress could remove or lessen the present restrictions placed on loans from the fund, but even though it did the money collected from an averaging of the past period would hardly be sufficient to do a great deal of good. We would not assume to estimate what the size of the fund would be but we know that it would be very materially reduced under the averaging plan.

Thirdly, the carriers which would remain in the recapture class would be compelled to borrow the money with which to pay the recapture claims once they were definitely ascertained. This means that they will have to borrow against their present property since they have not set up any liquid reserve, and such borrowing would lessen the assets behind their present securities.

Mr. HOCH. I would like to ask you one question. You referred at some length to the proposition that the return of the road is limited during prosperous times, and you think that the shippers could have well afforded to pay higher rates in those prosperous times.

Mr. OLIVER. Yes, sir.

Mr. HOCH. To pay higher rates.

Mr. OLIVER. Yes, sir.

Mr. HOCH. You intervened, your association intervened in the 15 per cent increase case. Does not your contention come down to this, looking at it from the viewpoint of the shippers, that since the shippers were not compelled to pay higher rates in prosperous times, when they could afford to pay, they should now be asked to pay higher rates in depressed times, when they can not afford to pay?

Mr. OLIVER. The proposition, I think, is a little bit different from that, Mr. Hoch. I think we said that inasmuch as the carriers have been limited by law as to receiving a fair return during prosperous times, in all equity they should be permitted a stabilized return during the period of depression. We, however, went a little bit further and said that if the commission feels that this proposition is economically unsound, then it is our view that the law should be amended to relieve the commission of that restrictive burden.

Mr. HOCH. I understand your viewpoint, so far as the carriers are concerned. I am asking you to apply the same principle from the viewpoint of the shippers.

Now, during prosperous times you contend that the shippers should have been called upon to pay a higher rate in order that the carriers might build up a reserve for times not so prosperous.

Mr. OLIVER. Yes, sir.

Mr. HOCH. Now, the shippers are also sharing the same kind of depression that the railroads are, and you come along in a time of depression and say that they were not asked to pay higher rates when they were prosperous and now when they are broke they should be asked to do so.

Mr. OLIVER. I agree with the statement that it is economically unsound to assert such a principle as that.

Mr. HOCH. That is the principle you asserted in the 15 per cent increase case.

Mr. OLIVER. Surely, because apparently it was the law, and we now say this law is wrong. Our main objection to the present law is that it apparently has not had a stabilizing result, regardless of its economic significance.

The CHAIRMAN. We are very much obliged to you, Mr. Oliver.

Mr. SHALLENBERGER. I would like to ask a question on that point, Mr. Chairman.

The CHAIRMAN. Mr. Shallenberger.

Mr. SHALLENBERGER. What do you say to the charge that the railroads have been extravagant and wasteful in spending their money during the times when they were prosperous instead of building up

a sufficient reserve for meeting their needs during depressed times? In other words, they have done as the Government has done. We have lived too fast and flown too high, and we have run in debt. We have dug holes on the Mall here in Washington for marble palaces, and now we have not got any money to build them. Did the railroads not waste their money during prosperous times?

Mr. OLIVER. If that were true, they should not have done so.

Mr. SHALLENBERGER. You do not think that that is true?

Mr. OLIVER. I do not think so. If it is true, there is no excuse for anything of that kind.

The CHAIRMAN. Thank you, Mr. Oliver.

Mr. OLIVER. Thank you, Mr. Chairman.

#### STATEMENT OF HON. S. WALLACE DEMPSEY APPEARING FOR NATIONAL ASSOCIATION OF OWNERS OF RAILROAD & PUBLIC UTILITY SECURITIES (INC.)

The CHAIRMAN. Mr. Dempsey, you have about eight minutes left.

Mr. DEMPSEY. I did not catch what the chairman said.

The CHAIRMAN. You have about eight minutes. Can you do any business in that time?

Mr. DEMPSEY. Do you think I can, Mr. Chairman?

The CHAIRMAN. I think you can.

Mr. DEMPSEY. All right. I will do the best I can. If you will let me run over two or three minutes, I will appreciate it.

I would feel exceedingly diffident about testifying before this committee, composed largely of men with whom I served for 16 years in Congress, and whom I regarded, during all that time, as thoroughly trained and skilled experts in all interstate and foreign commerce questions, in whose judgment and knowledge I always reposed the greatest confidence; but, happily, I am to address myself solely to on phase only of a question presented by a single section of the interstate commerce act—that of the retroactive repeal of the recapture provision, to which I have given no inconsiderable thought and study.

The suffering of the railroads from the depression, their loss of business and of revenue, so that they are scarcely able to make their overhead, their operating expenses and their fixed charges, is not alone generally known, but it has been recognized in many ways. The Interstate Commerce Commission is expediting the hearings on the applications for consolidations of the eastern trunk lines to avoid wasteful competition and to lessen operating expenses; the commission has also, in its report to Congress, recommended the repeal of section 15a of the interstate commerce act, retroactively, to relieve those railroads which may be subject to the payment of surplus earnings into the fund established by that section and to return their money to those who have already paid; Congress, in a few days, with unexampled dispatch, passed the reconstruction finance bill so that the railroads might be able to borrow money to meet obligations maturing in the next three or four months, amounting to approximately \$180,000,000, and which the roads have no funds to meet; and, lastly, the railroad employees of the country, numbering approximately 1,000,000 men, who know from actual experience and observation the deplorable condition of the railroads, through seeing empty freight cars piled up for miles along sidings, and passenger coaches



with no passengers, no freight being received or unloaded at terminals, did not wait for the slow process of arbitration, but in their own interest, to insure the continued operation of the railroads, and from a most commendable public spirit as well, voluntarily reduced their wages 10 per cent.

All of these great measures, to insure the continued operation of the railroads in the public interest, have either been completed or are well under way and are being hurried with all possible dispatch to completion. Consolidations which have lagged for a long period of years are in their last stages, and we may reasonably hope that the approval of the plan submitted is a matter of but a few months; the Reconstruction Finance Corporation is already doing business and in condition to receive railroad applications for loans, and will no doubt be able to advance them the money with which to meet their maturing obligations; the reduction in wages of the railroad employees has become effective; and the hearings on this bill to relieve the railroads of payment under section 15a are nearing completion.

While I shall devote the brief time I occupy to advancing what I conceive to be the strongest reasons for retroactive repeal of section 15a, it is enlightening to describe very briefly the provisions and purpose of that section of the law, and what it was hoped it would accomplish. It is important to know that the Interstate Commerce Commission, the body charged with railroad regulation, with a long experience in the administration of the regulatory law, did not recommend enactment of this section and, I am advised this committee as well, with an experience which made its members expert in interstate commerce questions, opposed the enactment of section 15a on the ground that it would be found impracticable to administer it.

To summarize, the section provided that rates should be made which would provide a fair return for the railroads of the country, as a whole, and, as it was anticipated that this would result in the earning by the stronger and more prosperous roads of an excess beyond a fair return, that this surplus should be paid into a fund to be loaned to the weaker roads and to be used in the purchase of rolling stock and equipment. From every standpoint the section has failed to work and proved impracticable; the railroads, as a whole, have not earned, in the 11 years, even the 5% per cent which was fixed as a fair return, and there is no claim that the great railroad systems generally have earned the 5% per cent, much less an excess, and so the underlying and basic purpose and intention which induced Congress to enact this section has failed; most surprising peculiarities have developed in the failure of great railroads like the Pennsylvania, the Burlington, the Northern Pacific, the Illinois Central, the Chicago & North Western, the Milwaukee, the Missouri Pacific, the Lehigh Valley, the Erie, and the Rock Island to earn any excess income, while two large roads for which receivers have been appointed, the Wabash and the Ann Arbor, have made earnings in excess of the 5% per cent, and roads rated as notably weak show greater excess earnings than others regarded as especially strong.

Eleven years have passed since the enactment of the section and with 1,148 railroads in 1920 and 959 in 1930, the number of which would be somewhat reduced because some are parts of systems, only nine recapture reports have been made and 260 are in process of preparation, leaving a large number untouched and the completion of

this work at the rate progress has so far been made, would take years; the commission claims that \$361,000,000 would be due under its valuations, which undoubtedly are extremely low, but estimating the amount which could be proved to be due as \$200,000,000, the collections which have been made amount to only \$10,000,000; practically all of this money was paid in under protest, and as only one case has reached the Supreme Court, and the commission was reversed in that on the ground that its valuations were inadequate, it can not be said until the Supreme Court has passed upon the questions involved that any of the payments made under protest could be held in the fund; and not one cent of the amount collected has been applied to the purpose for which the trust was created.

So, to summarize, the primary and basic purpose, the only object which in the minds of its advocates justified the enactment of this section, the fixing of rates so as to produce a fair return on all railroads the country over, was never carried out or even attempted; under the rates which have been in force, carriers as a whole have never earned the 5% per cent from 1921 to 1931, inclusive (partially estimating 1931); they earned on the average 4.36 per cent; while, as has been said, the commission estimates the aggregate recapture amount as \$361,000,000, this, as the commission basis is undoubtedly low in all valuations and omits items of value which must be considered.

It is certainly much too high; and, lastly, the ultimate purpose and design which was to be served by the section has altogether failed—that of aiding the weak roads from the trust fund—as there has been practically nothing paid except under protest, and it can not be certain that any of this very small amount really belongs to the fund until decisions of the highest courts are had in about 97 cases, the number of the carriers who have made payments.

It remains to show from the facts already stated and from the remaining circumstances in the case (1) That from the practical standpoint it would be impossible to collect any excess earnings; (2) that it is extremely doubtful whether equity would not hold the trust created for these funds to have ceased and enjoin collection; and (3) the disastrous effect of attempting to collect any excess, and, on the other hand, the impetus which would be given to the condition of the railroads by abandoning the claim to any excess, resulting in the removal of this very serious cloud on the credit of the railroads.

Certainly it is not practical to pursue the claim to surplus earnings unless they can be realized on within a reasonable time and at a cost reasonable in proportion to the amount recovered, a fair collection cost. The beneficiaries of any fund that might be recovered are the weaker roads. To be of assistance to them, the fund must be both recovered and distributed within, at the longest, a few years. Many weaker roads are fast being absorbed into the larger systems. Others are finding it impossible to earn a sufficient revenue to justify the continuance of operation. Since this section was enacted, approximately 200 out of 1,140 roads have ceased to report to the commission and must have either gone out of separate existence or have been abandoned. The history of the efforts during the 11 years to collect dispel the hope of collecting for many decades, if ever; the cases are of sufficient importance both in the many difficult questions of valuation involved and in the large amounts at stake to justify carrying them to the Supreme Court; but one case has reached that court

in 11 years, and in that the commission was reversed. At this rate of progress, how many years will it take to secure final determinations in all the cases? Little recapture work has been done or is even scheduled for 1928, 1929, 1930, and 1931.

Yet, with this infinitesimal part of the tremendous volume of work to be done, the Bureau of Accounts has made examinations of 3,854 cases, in 3,015 of which there have been determinations, and has made tentative decisions in 839 more. As practically 4,000 examinations have been decided in the small proportion of the work considered, how many thousands of such examinations will there be in all?

To end the description of the little that has been accomplished, not a cent has been collected, and of the small sum in the hands of the commission, nine-tenths was paid under protest, which of course means a reservation of all rights, and only one-tenth without protest.

So the small and weak roads could not hope for any help from this fund for a very long time to come—how long it would be futile even to prophesy.

The expenses of the valuations are enormous, both to the Government and to the carrier, and neither the Government nor the carriers can afford such expenditures at the present time. While the total expenses so far incurred are not available, some conception of the amount can be obtained from the fact that the cost of the Atchison system for 1929, 1930, and 1931 reached the enormous total of \$1,953,947.59, practically \$2,000,000. For the 11 years, the expense of this system alone was about \$5,000,000 and as it operates but 13,000 miles, while the railroads reporting to the commission cover 262,000 miles, or twenty times as much, the total expenses for the 11 years for all the roads subject to recapture, with but a small fraction of the work of valuation done, would amount to an enormous total. Besides this there is the Government expense, which would also be a large sum.

These costs embrace only the work so far accomplished, with only one case decided in the Supreme Court, and that not determining the merits, but sending the case back for retrial. With the legal proceedings complete both before the commission and in the courts, it would seem inevitable that the cost would approximate the \$361,000,000 which the commission claims on its valuation.

In other words, from the standpoint of expense alone, no prudent man would think of attempting to collect the alleged excess earnings. Quite aside from the money expended in the effort to make collections is the fact that the most valuable men both with the railroads and in the commission would be devoting their time, on the one side seeking and on the other opposing the collection of the alleged surplus, when it could be more profitably employed in improving our transportation service, which sorely needs the best and most efficient management possible during this severe depression.

Quite often during the hearings the question has been raised by members of the committee whether, conceding that from every practical standpoint and in fairness and justice as well it should be done, Congress has the legal and moral right to repeal this section retroactively. While I do not intend to make any extended legal argument, I think it is helpful, in view of the questions and suggestions of members of the committee, to consider briefly the legal and equitable aspect of the question. It must be conceded that the attempted

trust has failed for many reasons; because it has been found impracticable to fix rates to produce the excess which was anticipated; because it is equally impracticable to ascertain and collect any such excess; and because the commission felt that it would be impossible, even if an excess were collected, to loan it to the weaker roads or advance it for their benefit, since the act prescribes that a class of security should be required, which it clearly would be impossible for such roads to give.

Where a provision is made for a transfer of funds on a contingency which does not occur, the trust fails. (*Paul v. Paul*, 10 N. H. 117.) Where the necessity for or use of the trust ceases, the trust also lapses. (*Browning v. Ficklins Admr.*, 12 S. W. 714.) Again, admitting, as I understand, that the conditions as to this trust fund paid in and the amount claimed to be due are such as to call for some action, the question in the Members' minds is whether they have power to do anything. The answer is that one of the maxims of equity is that it will not suffer a wrong to be without a remedy and that it regards that as done which ought to be done. The question then is what ought to be done, and the answer is that in all cases where a trust fails or lapses, the trust fund reverts to the person from whom it comes. (*Paul v. Paul*, *supra*; *Underhill on Trusts and Trustees*, 8th Ed., p. 152, 165.) To repeal the section retroactively, therefore, so as to return to those who have paid the small amount on hand, and to relieve the other carriers of the liability to pay, would be in accord with the principles of equity and with the adjudged cases. Moreover, it accords with what common sense dictates should be done: the law can not be administered for the period since its enactment and everyone admits that it should be repealed for the future; it would be a bad law for the future and it has been a bad law for the past. And as to the past, the money belongs to the railroads, and the trust for the weaker roads being impossible of being carried out, the fund, under well-settled principles, reverts to the railroads.

Before pursuing the line of argument I have laid down, it is enlightening to observe that the whole principle of fixing rates so that an excess should be earned, taking it away from the roads earning it and distributing it among other roads who it is thought may need it, is an exceedingly vicious and unwise one because any fund collected under the most favorable conditions would, a large part of it, be dissipated in expenses before being applied to the use of the beneficiary.

Of course, the small sums on hand and the amounts claimed to be due should be treated the same. The law was made to apply to all roads alike and the circumstance that some small sums may have been paid in should, of course, make no difference in disposition between these sums and the claims for amounts alleged to be due. To attempt to retain the small amounts on hand or to collect the larger amounts claimed to be due would be most disastrous from every viewpoint, to the shipper, the railroads, and the country as a whole. It would be in direct conflict, too, with what Congress itself has done to mitigate and end the present depression and the suffering of our people consequent upon it. So far as the railroads are concerned, Congress surely can not intend to offset the benefits of the far-seeing and most helpful reconstruction finance act by keeping on the statute books a law under which the commission claims that the railroads owe \$361,000,000.

While it remains a law, even on an application to the board of the Reconstruction Finance Corporation, and much more in any effort to privately finance their needs, would not carriers be asked, as one of the most important questions involved, how much does the commission claim you owe as excess earnings? And, despite a reply that the commission's valuation is far too low, and that under a fair valuation little or anything would be due; that the commission itself contends that any amount collected could not be loaned or distributed, owing to terms requiring security which the roads interested would find it impossible to furnish, and that, therefore, the trust had lapsed and failed; and so this provision of the law was not enforceable, the Finance Corporation, and still more other financial institutions, would respond that they must treat the amount claimed by the commission as owing and a lien until, in the process of many years, it was found invalid by a court of last resort. This cloud upon the title would certainly embarrass every carrier subject to such a claim, and notably the small and weak roads, in securing assistance necessary not alone to meet maturing obligations, but to their continued operation.

What would the temporary wage reduction of approximately a million railroad employees, of 10 per cent of their wages, which will amount, it is estimated, to about \$200,000,000, avail, if the railroads are to be faced with a cloud on their ability to borrow, of \$360,000,000, or any considerable sums? It seems anomalous, after this deduction, to load the railroads down with a liability of twice the amount, when it can serve no useful purpose to the weaker roads, the only ones who have the possibility of an interest in having this done.

Unanimity of opinion, particularly by those who have given the question consideration and study, is always helpful, and we find that the shippers of the country, the State commissions of the various States, the association representing the investors of the country, the commission itself, all after prolonged thought, appear and unite in urging retroactive repeal.

With retroactive repeal of section 15a enacted, this committee will have supplemented the reconstruction finance bill and the project for consolidation of the railroads, and every Government agency will have done its utmost to rescue the railroads from their present dilemma, and to insure efficient and economical transportation. This committee has always vied with appropriations for the position of first place in volume of work. It easily occupies a foremost place in the importance of its legislative programs. It has had no legislation for many years of greater importance or usefulness than the retroactive repeal of the recapture provision.

The CHAIRMAN. We thank you very much, Mr. Dempsey.

Mr. DEMPSEY. Did I exceed my time, Mr. Chairman?

The CHAIRMAN. You concluded right on time. You are the only witness who has appeared before us thus far that has done that.

**STATEMENT OF FRANK W. NOXON, SECRETARY RAILWAY BUSINESS ASSOCIATION, 1112 SHOREHAM BUILDING, WASHINGTON, D. C.**

The CHAIRMAN. Mr. Noxon, you have sat here with us for a long time. We have now reached you for 15 minutes. You wanted an hour. I hope that you can give us a lot of information in 15 minutes. I believe you can.

Mr. NOXON. Mr. Chairman, when I first began attending these hearings you were then speaker of the Texas House of Representatives.

The CHAIRMAN. That has been a long time ago.

Mr. NOXON. And I make bold now to break the silence of all those 23 years and asked for an hour. I will see what I can do in 15 minutes.

My name is Frank W. Noxon. I am secretary of the Railway Business Association. That is a national body of industrial, business, engineering, and contracting companies. They furnish goods and services to the railroads—anything from a locomotive or car to its material or patented part anything from a lead pencil to a bridge; anything from the lumber or steel used in ties or rails to the contract construction of roadway and structures; and all sorts of supplies, including coal and oil fuel. There is hardly a commodity that railroads do not buy if they have the money. Our membership is therefore highly miscellaneous. Somewhere between one and two million men, located in all the States, are employed when times are good in this group of industries. Many of our people have nonrailroad customers also but when railroad sales fall off the pay roll as a whole is affected. Our object is to stabilize and strengthen the railways' financial ability to deal with our members, especially as this is influenced by policies of government. We operate with complete independence of the railway officials. They do not contribute in any way to our support or collaborate with us in defining policy or framing statements. They never know what we are going to do until we have done it. Before we all heard their counsel, Colonel Thom, say so here I did not know the welcome news that he would urge repeal of section 19a. Neither he nor any other railway official was aware that I was to appear here to-day and hence of course they have no idea what I propose to say. This testimony is exclusively in the interest of those who employ me.

Our association was formed in 1908. I was hired next day. For more than 23 years I have closely followed the evolution of railway regulation in Congress, by the legislatures, and by Federal and State commissions. When I began attending the hearings of this committee your chairman was speaker of the Texas House; while his predecessor, senior of the minority, was in the assembly of my native State of New York. Both have been very kind to me. Mr. Parker perhaps because he and I face together the perils of laymen fallen among lawyers; Mr. Rayburn perhaps because he looks upon me as a tenderfoot in these corridors and hasn't the heart to treat me rough. Another factor may have been gratitude to me for never before having stood up and opened my mouth at a hearing, though others were uttering billions of ton-miles.

If I now break the silence of nearly a quarter century, I hope you will feel that I have on deposit with you a balance of forbearance upon which to draw a check. I am moved to speech because there are signs that you may be about to do something which I had despaired of surviving to see, and am so thrilled at the prospect as to offer you a lay observer's reasons for hoping you will do it. If it shall appear as I proceed that in all these years the bloom has been rubbed off my innocence here and there, if you detect an aroma of the law books and the courts which I have absorbed from the society of my learned



brethren, this only means that I have taken the risks of my occupation. In a human world you can not expect perfect virtue.

As a man on the outside looking in, then, it is my impression that you have before you in H. R. 7117 one of the historic forward steps in the regulation of common carriers.

We favor the retroactive repeal of recapture. We favor eliminating from the rule of rate making all reference to the investors' interest either in a return on his present holdings or in a market where he may buy and sell securities. We favor repeal of section 19a, doing away altogether with valuation, and we oppose the substitution of any kind of rate base. We recommend that in one form of language or another you provide simply that the objective to be aimed at by the Interstate Commerce Commission in the regulation of rates shall be adequate transportation facilities. We favor repeal of the provision which presents accumulation of maintenance reserves in good years for use in poor years.

Reasons for retroactive repeal of recapture have been fully explained to you by others. I shall not burden you with repetition. On behalf of my group I only add a word on one feature that especially affects them. The damage which they have suffered from that provision can not be measured. It arises from the requirement that recapturable income shall be computed annually. Under that arrangement the railways have been unable to spend on maintenance in dull years sums earned in good years but not spent. With us, excluding fuel, about two-thirds to three quarters of the business is paid for, not with capital investment, but with earnings, charged, when spent, to operating expenses. The resulting instability has been a great hardship. H. R. 7117 not only repeals recapture but explicitly directs the commission to spread its measure of earnings aimed at in rate regulation as an average over a period of years. Colonel Thom has emphasized the fact that in the absence of valuations railways, not knowing what the recapturable sums would be, have been unable to set up recapture reserves. At the same time, and for the same reason, they could not set up maintenance reserves, since every dollar of earnings in each individual year not expended for operating expenses had to be reported as income to be computed for purposes of recapture. If railways were free to create maintenance reserves for use in lean years the effect would be to relieve our industry, both plant and pay roll, of periodical idleness alternating with sudden pressure which overwhelms capacity.

Congressmen Huddleston has inquired what proportion of operating expenses represents purchases. Ignoring capital expenditures, the fuel, material, and supplies last year were 34.6 per cent of total operating expenses. Taking account of capital outlays also, the percentage was 31.4 per cent. You will get some idea of the fluctuations in railway purchases by comparing 1931 with 1926. Total purchases may be measured by combining the items of operating expense reported as "locomotive fuel" and "material and supplies" with an estimate of the material used in capital improvements—that is, material consumed by the railroad directly and by manufacturers and contractors. I am advised to figure capital material at not exceeding 40 per cent of the total capital charge. On that basis we have the following:

	1926	1931
Locomotive fuel.....	\$407,431,929	\$225,000,000
Operating material and supplies.....	1,209,728,717	755,000,000
Capital material (40 per cent of gross capital expenditures).....	354,034,000	160,000,000
Total fuel, material, and supplies.....	1,971,195,646	1,140,000,000
Decrease.....	831,195,646	

<sup>1</sup> Or 42.2 per cent.

That is the shrinkage in the business done by the railways with our industry 1931 under 1926. The slump substantially exceeded the decline in railway business. While passenger-miles dropped only 38.5 per cent, ton-miles but 30.4 per cent and total operating revenue no more than 35.6 per cent, purchases sank 42.2 per cent. The reasons were, first, insufficiency of accumulated reserves; second, inability to arrange financing for improvements in advance in favorable years; third, fear to use either surplus or capital beyond the bare necessities of safe and satisfactory operation in a time of reduced traffic and earnings with uncertain prospects. It is obvious that any substantial progress toward a more even level of railway purchases throughout each decade will help everyone. It will tend to cut down the cost of railway replacements and additions with corresponding benefit to the public. At the same time railway purchases are so vast that the financial ability of the railroads to come into the market when general business is slack formerly acted and we believe would again act to postpone a depression, to mitigate its severity, and to hasten reemployment.

That is all I have to volunteer on recapture. Let me turn now if you please to the other recommendations which were stated seriatim a moment ago. To make clear the considerations underlying those recommendations, I ask your indulgence in some observations respecting the nature of the legislative juncture which has been reached and of the task with which these bills confront you.

First please let me ask you to consider what happens in the practical matter of rate making when Congress lays its hand on the mechanism—what happens, where it happens, and to whom it happens. In Massachusetts I knew a judge who refused to send a prisoner to a jail that he had not seen. You may regard it as helpful in the performance of your duty to follow your rule of rate making down to the ultimate consumer and observe how it rests on his stomach. Some of you are perhaps most familiar with the formal rate proceedings before regulatory bodies. There is another immense realm of rate adjustment, more or less closely related to what Congress, the State legislatures and the commissions do, but transacting a large business and capable of transacting a much larger business without such governmental assistance or in coordination with such aid. Let us glance at the places where rate adjustments bring together the shippers and carriers in the original contact. As in the law, so in the sphere of traffic I am a tenderfoot. But I can give you a sufficiently accurate outline of these contacts for my present purpose.

Rate changes originate in regional rate committees maintained by the railroads covering the country. Classifications come from three territorial classification committees. More than 10 years ago a com-

mittee of the National Industrial Traffic League, headed by William H. Chandler of the Merchants Association of New York, undertook in cooperation with these rate committees to organize the business in orderly procedure. That effort appears to have fully accomplished its purpose in establishing a permanent method and mechanism. No change in rates is filed until notice has been given to all concerned and a hearing held, if anyone requests, before one of these committees. There is a formal docket. Railways and shippers interested are represented, differences arising not only between railways and shippers but between railways and between shippers. To a large extent these discussions eliminate formal proceedings before the commission. Many adjustments are made in part by agreement, limiting the scope of what is referred to the governmental umpire.

Up to the present time the considerations determining disposition of these rate proposals have been almost wholly commercial. They are traffic cases, not revenue cases. Some months ago the chairman of one of these rate committees lent me a stack of sheets each representing a docketed item, the whole covering a period. I looked them through and as I recall it found not more than two or three where increase of revenue was specified as the purpose. Certainly these committees have never expressed the intention of using their dockets for anything like a systematic and comprehensive observation of the flow of capital into railway additions and improvements as compared with any standard of railway preparation for handling future traffic, and of the trend of revenue and income as bearing on such capital inflow. This is not intended as a criticism. On the contrary the miracle is the progress already made in so few years toward a cooperative spirit, habit, and practice. Rather should the mechanism now so smoothly operating and so competently manned be hailed as a gift of Providence to a Nation which seeks the solution of a major economic problem and finds ready-made a type of agency which otherwise it must laboriously and slowly create.

Within a fortnight an event of first magnitude has occurred. All the Eastern railroads, members of the Central Freight, New England Freight and Trunk Line Associations, have constituted a new joint agency to be known as the rate research committee, whose scope is nothing but revenue. The announcement pointed out that the project is "in harmony with a suggestion made by the Interstate Commerce Commission in the 15 per cent case of 1931." That was a proceeding in which for the first time in railroad history all the lines in one Nation-wide application asked for increased revenue through an advance in freight rates. The fact that this prayer for relief was denied in the form as presented sinks into insignificance beside the actual consequences. The application served to get out onto the national council table the problem of preserving our railway system in full strength and vigor.

Not only did the commission in response pronounce relief indispensable and specify numerous methods to that end which it would sanction, but it made the same subject dominate its annual report, embodying therein much of the text of the rate decision, and thus erecting the position there defined into a formal policy. Not only this but in both branches of Congress, unless I much mistake the straws in the wind, anxiety over the railroad situation prevails as never before except in 1920 when a starved and sick transportation

system was turned back to its owners for convalescence to health and vitality. In the rate decision, the commission enumerated various medicines and tonics, amongst them temporary rate increases. Then looking to the longer future the commission said: "We believe that the traffic departments of the railroads should address themselves to the task of making such changes in the rates on particular kinds of traffic as will, in their judgment after careful analysis of all attendant circumstances, produce additional revenue and which can be supported as reasonable under existing conditions." The commission promised that when such revised tariffs are filed the proceedings will be expedited. To this suggestion the eastern lines have responded in creating their rate research committee.

Your attention is invited to the composition of this new body. They are taken from the permanent regional agencies to which I have referred. The duty of the rate research committee is to make careful analysis of the rates and classifications applicable to individual commodities, to propose changes, hold hearings on these are the offices of the several freight associations, and make recommendations to the Eastern Traffic Executives Association (that is the traffic vice presidents of individual systems), which if there approved will be made effective without duplication of hearings before the freight association committees. I am not informed whether similar rate research committees are contemplated in the South and West. I assume so.

Obviously, if the proposed changes are to go into effect, one condition must be fulfilled—namely, to some extent the voluntary suspension or limitation of competitive freedom. Competition between railways, competition between shippers, which you have been told in these hearings would bring pandemonium if not unrestrained by regulation, must be restrained further than it ever has been, either voluntarily by concerted action for the common welfare or under compulsion by the commission or both. Railways and shippers, I expect, will never voluntarily forego competition unless they are influenced by what Mrs. Wharton has called a "greater inclination." Competitive excess must be subdued by the explosive force of a more powerful motive. This motive we find in the fear that rail service will deteriorate or break down. The large rate advances sanctioned in 1920 had almost solid national backing, because the public was terrified by the menace of an interruption of prosperity due to freight congestion. Since then times have changed. Few business men have faith enough in the teachings of history to look forward to a rail breakdown so far as volume of traffic is concerned, but there is a new standard of quality, what I call American superservice, which must be maintained if business in the coming recovery is to retain the advantages of limited inventories and consequently low operating industrial and mercantile cost, made possible by the grade of rail service developed since 1920. The attitude both of industrial traffic men and of railway traffic men toward a truce in competition will be determined by their apprehension of a let down in rail service. By the same token the readiness of the commission to use compulsion or pressure where competitors are obstinate will depend upon its anxiety or what it believes to be the public anxiety over the service prospects. The rate research committee is eastern only and the announcement does not specify a scope beyond a sort of general once over of the rate structure. We need not doubt that such exploration will be national

or that the process will be permanent and continuous. If the new implement proves serviceable in a crisis, it will naturally be kept going to prevent crises. Mr. Benton hopes that never again will savings bank depositors and insurance policy holders come before the commission. So sing we all of us. If the rate research committee can be made to work, they never will have to come.

What kind of a rule of rate making does Congress think will help to make that process workable? As I view it, your task is to answer that question.

My main purpose in requesting the opportunity to testify is to urge upon you some practical suggestions with respect to that phase.

In a sentence, as I see it, your opportunity is to do something which will help divert the public mind from the security owner to the user of the facilities as the beneficiary of your rate-making rule. For 12 years, under section 15a, the thought of all concerned has been focused on the rights of the security owner. Congress had said what he was entitled to. A large part of the public believed he was not entitled to anything whatever. They denounced "fair return," especially 6 per cent, as a "guarantee" and demanded repeal. The return at the rate was to be computed upon "valuation." Everybody had his own idea about methods of valuation. These controversial features have so preoccupied the commission, the courts, the railroads, the shippers, and the general public that it has been impossible to command adequate and intelligent common counsel on the basic aspect of providing rail facilities and service. We have quarreled over the method of measuring railway income while the income was drying up. In my judgment, the mechanism just set up by the united eastern railways and such mechanism as may be set up by cooperating shippers will never install and permanently protect a solution for the problem of adequate investment in railway additions and betterments until this devastating law suit over fair return on valuation, to say nothing of recapture, is terminated and dismissed by striking the whole foundation out of the act.

To limit the rate rule to the public as its beneficiary in no way deprives anyone of any rights. It is not the province of a legislative to protect citizens in their rights. That is for the courts. If the commission reduces rates to the point of confiscation the court will look not to Congress but to the facts. If valuation is in question the court will not take one made by Congress or its agent but will make its own valuation. The court on the other hand has never reviewed the judgment of Congress or commission. In the O'Fallon case no constitutional question was involved. The court canceled the valuation because the commission had refused to consider an element of value prescribed not under *Smyth v. Ames* but under 19a.

Take fair return, valuation, and the security owner's "rights" out of the picture, bring the user's need into the foreground, and you will greatly improve the prospects for successful cooperation among shippers, among carriers, and between shippers and carriers for effectuation of the new rate rule. You will stimulate and encourage the world of traffic to keep the question of adequate and progressive facilities systematically and continuously before them. You will liberate their minds for concentration on that phase. Among that large part of the general public which by temperament or affiliation admires declining more than rising income for security owners, you

will lessen opposition to necessary adjustments. Perhaps most influential of all you will lead all concerned to form the habit of keeping abreast of progress in the development of facilities through the observation of reports which cover the indispensable factor of capital inflow, but subordinate this to the public purposes of such investment. In short, you will bring a new sense of responsibility to the whole public for a concern which is everybody's business, neglect of which will injure everybody, and successful discharge of which is essential to everybody's prosperity.

Witnesses were asked whether a rate level can be found under which service can be adequate. The best definition of a sound fabric of tariffs that I have ever heard is this: Rates on which the traffic can move and on which the roads can move it. I answer, yes; such a rate level can be found. In general there are two reasons for answering yes.

First. Revenue can be increased by stopping the leaks.

One of these classes of leaks I have just discussed—the leak of irresponsible and unrestrained competition. The commission has often asserted, sometimes with specifications, that large revenues could be obtained on commodities fully able to pay more than present rates kept low or cut lower not under compulsion of economic necessity but wilfully. I have expressed to you my hope that with adequacy of facilities and service systematically and constantly before them as an aim in rate adjustments all concerned will unite in correcting these improprieties and resisting their recurrence. Substantial aggregate sums can thereby be added to revenues.

Another set of leaks is represented by excessive competition from highways, waterways, and so on. Railway revenue is artificially depressed by Government policy or lack of policy relating to such competition.

An avowed aim and an evident result of Federal barge operation is the reduction of rail revenues, partly through forcing rates down, partly through division of revenue on through rail-and-barge routes. We have promise that the Government will desist from this artificial forcing of uneconomic rates. The Denison Act provides a way for the Government to get out of that business. Without waiting for this, the Secretary of War a few weeks ago repudiated and canceled two of the most outrageous rates put in by the Inland Waterways Corporation. In due course, we are entitled to hope, river barge competition with railroads will be deflated to an economic basis, where those engaged in it must survive if at all on self-reliance in an equal contest. The consequence is certain to be an increase in railway revenues, both through retention of traffic volume and through maintenance of remunerative rates. Coastwise and intercoastal ships are not regulated. Some of these operating in that business are asking for regulation to protect them against irresponsibles. No doubt Congress will respond. Whatever protects economic against uneconomic shipping will protect the railroads also, with a corresponding benefit to railway revenue.

In the case of highway competition, we may likewise look forward to shaking out a pioneering and chaotic situation into one in which uneconomic service will largely disappear. A British Royal Commission reporting about a year ago concluded that if the qualifications of employees and their hours of service imposed upon railroads were



imposed upon motor vehicles this measure alone would quickly drive uneconomic transport from the highways. Many of our State legislatures have stiffened their restrictions not only as affecting employees but as otherwise affecting the public safety and convenience. Last year I visited a number of States where such legislation was pending, and found the trend irresistible because of the character of the proponents. These were in the main farmers with 3-ton trucks and pleasure motorists. I formed the impression that if nobody acting for the railroads or to help them had lifted a finger the legislation would have been passed, and that we are in for more rather than less. Your committee will consider a proposal that the House investigate the interstate aspects of the highway problem. On the initiative of the Interstate Commerce Commission, which has investigated it, the Senate Committee on Interstate Commerce is now hearing witnesses. Beside resentment over danger and crowding on the highways, farmers and pleasure motorists as well as many others seem to be engaged in a taxpayers' insurrection. The State legislation usually includes provisions increasing the proportion of highway cost paid by motor vehicles for hire. This taxpayers' uprising seems to include agitation against making highways more expensive or wider or building new ones. All these tendencies are likely to hold the trucks more nearly within economic limits, equalizing to that extent the conditions of competition. When national prosperity produces larger traffic total to be earned by all forms of transport, the railways seem likely to take a much better share than most people have expected; and together with relief from uneconomic pressure for excessive rate-cutting, this should exert a favorable influence upon rail earnings.

So much for leaks.

The second reason for thinking that a rate level can be found under which the traffic will move and under which the railroads can more it lies in the field of operating economies. It is said that a dollar saved is a dollar earned. In railroading, a dollar saved is a dollar that need not be earned—that need not be paid by shippers. You need hardly be assured that in such concerted rate adjustments for revenue as I have discussed the shippers and the regulators will observe with vigilance the trend of operating expense. Railway officials will be equally eager not only to keep that aspect to the front but to emphasize at all times the conditions requisite for vigorous progress in economy. The largest factor in progressive economy is the investment of capital in improvements. To make such investment possible is an indispensable feature of wise legislation and of practice under it.

I invite you to compare the economies which our railroads accomplished in the ten years after Federal control with the economies which they could have made if they had had the money. The test that I offer, 1920 to 1930, is freight operating expenses per thousand revenue ton-miles, Table No. 1. The systems are the 46 roads having, in 1920, gross earnings of \$25,000,000 and reporting this information. Of those 46 roads in the 10 years two-thirds cut down their cost by more than 20 per cent; half reduced it by more than 27 per cent; a third by more than 36 per cent; the top ten by more than 40 per cent and the top three by more than 50 per cent, with one system scoring 53.6 per cent. Striking results are shown if we separate the details. For example, Table II shows gross ton miles per train hour. Here 12 systems advanced more than 100 per cent and the leader 147.4 per

cent. Still another test, Table III, is pounds of coal per thousand gross ton miles, which the top 10 brought down by more than 37 per cent, and one system by 49.3 per cent. These advances in economy could be traced in every department of railway operation. They are accomplished by replacing an old unit for a better one, by applying new devices to units not yet worn out, by introducing installations of new kinds, and by enlargement of facilities.

The saving is measured by subtracting the fixed charges on the new investment from the operating economy. In many instances the new unit in a few years pays for itself. It is difficult to grasp the advantage to the country as a whole if all the roads could have made the advance scored by some of them. Even the roads which stood at the top in 1920 went on improving; not as much per cent as these at the bottom, but substantially. This is shown in Tables IV, V, and VI. Evidently no degree of excellence yet attained lifts a railroad beyond the opportunity for further progress. The rub comes in having the money. Table VII shows the average investment per mile of road owned in 1930 and 1920. With 10 roads increasing this figure more than 45 per cent and one 98.9 per cent, 26 systems added under 20 per cent. The spread is too great.

These figures for investment are net. When the railroad makes an improvement it must have not only the money which it charges to capital but the money which it debits on account of retirements. To make an improvement a railroad must be in position to finance the operating charge out of earnings and the capital charge either out of surplus or out of security sales, which in turn depend upon earnings.

For progress in economy the railroads depend very largely on the members of our association. At all times the physical plant of the carriers is under bombardment by the inventors and developers of new designs, new materials, new methods. Large and expensive laboratories are maintained by the leading concerns. At a given moment two kinds of competition are in force. Where several companies offer each an article already in general use, purchases are made by bidding. Announcement that a certain railroad is in the market brings on an appointed day a crowd of sales representatives to its offices, each hoping to get the whole order or at least a larger share of it than he got last time. Usually consideration is restricted to bidders whose reliability is satisfactory. Since no two of the competing articles are identical in design or material, price may not wholly control the award. As I have said, many of our members have other customers beside railroads. They are familiar with general practice. A couple of years ago I had occasion to get a line on the weight currently given to price. I got the impression that railroad purchasing officials cling much more steadfastly to emphasis on price than is now common in the business world. In my time never the less I have observed progress in that direction on the railroads also. An important and sometimes a decisive factor is engineering service—the prompt availability of a specialist who follows up the goods in use, assisting in the development of advantageous practice, overcoming difficulties, making deficiencies good and often working out changes in the article. These features being equal, great stress is still laid upon dependability and general standing.

Another kind of competition occurs where the article is so highly protected by patents as to approach or attain monopoly. In that

case the manufacturer has his eye on the date when his patent expires. He is competing with all those who may lie in wait for the expiration date to enter the field. He toils incessantly to make such improvements that when the existing patent runs out it will be worthless. The classic illustration is the air brake.

Our industry is constantly adapting itself to new conditions. Within a few years electric traction has wrought one such change in the scene. At present the most conspicuous innovation is the coordination of highway with rail transportation, the future of which nobody can foretell.

At a time like the present, when traffic and earnings are down, with no very sure basis for guessing at the prospects, railway officers in command of financial resources think not so much about a bigger plant but more about a better plant. At this moment engineer salesmen of our companies are exhorting the railways to take advantage of bargains, replacing obsolete or obsolescent units with the newest types. As soon as a number of large systems are able to go in for that sort of thing on a considerable scale the activity will ramify among the material people, giving new life to hundreds of communities and affording such increase in railway traffic that one system after another will be placed in position to join the procession of progress.

As a whole the railroads lag too far behind the leaders in progress for operating economy. During a considerable period earnings must be higher than we have been accustomed to have them so that the backward systems may bring themselves to a higher standard. This process will work only if the strongest roads retain the whole of their earnings. They are the leaders. To them the others look for leadership in experiment. Most important of all, the one thing needed to give the weaker lines a market for their securities is the spectacle of large success on some lines. The hope of the investor in a medium or weak line is that it may become a strong line. Congress alone can not pledge that hope or redeem the pledge. It is for the carriers, the shippers, and the regulators to provide the country with adequate transportation. But your legislation can do much to promote their success.

TABLE I.—Freight operating expenses per thousand revenue ton-miles

Road	1920	1930	Per cent decrease 1930 under 1920
Texas & Pacific	\$15.39	\$7.14	53.6
Gulf, Colorado & Santa Fe	13.02	6.21	52.3
Missouri, Kansas & Texas (including M. K. & T. of T.)	14.72	7.25	50.7
Texas & New Orleans	17.26	9.27	46.3
Norfolk & Western	6.60	3.60	45.5
Pennsylvania System	12.30	6.79	44.8
New York, New Haven & Hartford (including C. of N. E.)	22.71	12.83	43.5
St. Louis-San Francisco	14.18	8.03	43.4
Chesapeake & Ohio (including H. V.)	6.04	3.55	41.2
Central of Georgia	13.75	8.10	41.0
Great Northern	10.06	5.99	40.5
Missouri Pacific	10.83	6.57	39.3
Louisville & Nashville (including L. H. & St. L.)	10.51	6.48	38.3
Chicago, Rock Island & Pacific (including C. R. I. & G.)	12.10	7.67	36.6
Central R. R. of New Jersey	15.61	10.15	35.0
Denver & Rio Grande Western	12.12	8.05	33.6
Atchafalaya, Topeka & Santa Fe (including P. & S. F.)	12.12	8.12	33.0

TABLE I.—Freight operating expenses per thousand revenue ton-miles—Continued

Road	1920	1930	Per cent decrease 1930 under 1920
Chicago, Burlington & Quincy	\$9.30	\$6.23	33.0
Seaboard Air Line	13.84	9.36	32.4
Southern Pacific-Pacific Lines	13.04	9.01	30.9
Chicago, Milwaukee, St. Paul & Pacific	10.77	7.62	29.2
Wabash	10.18	7.25	28.8
Boston & Maine	16.01	11.56	27.8
Pittsburgh & Lake Erie	11.60	8.37	27.8
Erie (including Chicago & Erie)	9.72	7.12	26.7
Baltimore & Ohio	9.24	6.79	26.5
Union Pacific	8.43	6.25	25.9
Chicago & Northwestern	11.76	9.15	22.2
Pere Marquette	11.14	8.69	22.0
Southern Railway	11.52	9.00	21.9
New York Central (including Mich. Central Cin. No.; C., C., C. & St. L.; Boston & Albany; E. I. & T. H.; and O. C. Lines)	10.50	8.33	20.7
Atlantic Coast Line	14.64	11.63	20.6
Illinois Central (including Y. & M. V.)	8.31	6.73	19.0
Chicago, St. Paul, Minneapolis & Omaha	11.73	9.52	18.8
Lehigh Valley	10.73	8.85	17.5
Northern Pacific	9.57	8.07	16.7
Chicago & Alton	10.00	8.43	15.7
Grand Trunk Western	11.23	9.87	12.1
Oregon Short Line	7.82	6.87	12.1
Oregon-Washington R. R. & Navigation Co.	11.35	10.09	11.1
Reading (including Port Reading & Perkiomen)	9.99	9.00	9.9
New York, Chicago & St. Louis	7.48	6.84	8.5
Delaware, Lackawanna & Western	10.74	9.99	7.0
Delaware & Hudson	8.47	7.96	6.0
Chicago & Eastern Illinois	8.64	10.35	19.7
Elgin, Joliet & Eastern	8.60	10.62	23.5
Minneapolis, St. Paul & Sault Ste. Marie	( <sup>1</sup> )	( <sup>2</sup> )	( <sup>3</sup> )
Boston & Albany	( <sup>1</sup> )	( <sup>2</sup> )	( <sup>3</sup> )
Michigan Central	( <sup>1</sup> )	( <sup>2</sup> )	( <sup>3</sup> )
Big Four (including Cin. No.; C., C., C. & St. L.; E. I. & T. H.)	( <sup>1</sup> )	( <sup>2</sup> )	( <sup>3</sup> )

<sup>1</sup> Increase.

<sup>2</sup> Operating expenses not apportioned for 1920.

<sup>3</sup> Included in New York Central.

TABLE II.—Gross ton-miles (excluding locomotive and tender) per train hour calendar year 1930 compared with calendar year 1920

Road	1920	1930	Per cent increase 1930 over 1920
Texas & Pacific	10,551	26,101	147.4
Gulf, Colorado & Santa Fe	15,714	31,916	132.7
New York, New Haven & Hartford (including Cent. of N. E.)	10,479	24,238	131.3
Missouri, Kansas, Texas Lines (including M. K. & T. of T.)	12,723	28,371	123.0
Central of New Jersey	11,285	24,951	121.1
Erie (including Chicago & Erie)	17,475	36,906	111.2
Boston & Maine	10,642	21,993	108.6
Pere Marquette	10,821	22,255	105.7
Chesapeake & Ohio (including H. V.)	19,323	39,020	101.9
St. Louis-San Francisco	10,303	20,787	101.8
Pennsylvania System	14,792	29,661	100.5
Norfolk & Western	21,445	42,946	100.3
Pittsburgh & Lake Erie	19,443	38,174	96.3
Denver & Rio Grande Western	10,966	21,441	95.5
Union Pacific	21,604	40,627	88.1
Chicago & Alton	15,071	24,527	87.6
Missouri Pacific	14,401	26,722	85.6
Louisville & Nashville (including L. H. & St. L.)	11,408	21,026	84.3
Wabash	16,412	29,932	82.4
Atchafalaya, Topeka & Santa Fe (including P. & S. F.)	17,379	30,998	78.4
New York, Chicago & St. Louis	15,836	27,975	76.7
Michigan Central	18,985	33,438	76.1
Southern Pacific-Pacific Lines	15,616	27,507	76.1
Great Northern	16,061	28,021	74.5
Boston & Albany	11,553	19,937	72.6

TABLE II.—Gross ton-miles (excluding locomotive and tender) per train hour calendar year 1930 compared with calendar year 1920—Continued

Road	1920	1930	Per cent increase 1930 over 1920
New York Central (including O. C. Lines)	18,684	32,197	72.3
Chicago, Milwaukee, St. Paul & Pacific	13,786	23,453	70.2
Big Four Lines (Cinc. No.; C. C. C. & St. L.; E. I. & T. H.)	17,496	29,737	70.0
Baltimore & Ohio	14,900	25,170	68.9
Central of Georgia	11,611	19,490	67.9
Chicago & Eastern Illinois	15,438	25,877	67.6
Chicago, Rock Island & Pacific (including C. R. I. & G.)	13,157	22,052	67.6
Grand Trunk Western	14,252	23,843	67.3
Delaware & Hudson	15,962	25,510	59.8
Reading (including Port Reading & Perkiomen)	14,042	22,432	59.7
Atlantic Coast Line	12,869	20,500	58.9
Chicago & North Western	13,125	20,776	58.3
Seaboard Air Line	12,488	19,656	57.4
Oregon-Washington R. R. & Nav. Co.	14,538	22,519	54.9
Chicago, Burlington & Quincy	16,897	26,140	54.7
Southern	12,951	20,009	54.5
Chicago, St. Paul, Minneapolis & Omaha	10,678	16,464	54.2
Oregon Short Line	17,569	26,495	50.8
Minneapolis, St. Paul & S. S. Marie	13,000	19,520	50.2
Texas & New Orleans	14,039	20,913	49.0
Illinois Central (including Y. & M. V.)	16,857	24,963	48.1
Lehigh Valley	19,117	27,487	43.8
Delaware, Lackawanna & Western	17,751	25,083	41.3
Northern Pacific	18,219	24,848	36.4
Elgin, Joliet & Eastern	14,421	15,580	8.0

TABLE III.—Pounds of coal per thousand gross ton-miles (excluding locomotive and tender) calendar year 1930 compared with calendar year 1920

Road	1920	1930	Per cent decrease, 1930 under 1920
Missouri-Kansas-Texas Lines (including M. K. T. of T.)	207	105	49.3
New York, New Haven & Hartford (including C. of N. E.)	237	123	48.1
Texas & Pacific	201	105	47.8
Gulf, Colorado & Santa Fe	189	105	44.4
Pere Marquette	200	113	43.5
Boston & Maine	212	125	41.0
Chicago & Alton	244	145	40.6
Chesapeake & Ohio (including H. V.)	156	95	39.1
Union Pacific	193	120	37.8
St. Louis-San Francisco	259	162	37.5
Delaware & Hudson	230	144	37.4
Grand Trunk Western	185	119	35.7
Norfolk & Western	202	131	35.1
Chicago, St. Paul, Minneapolis & Omaha	223	145	35.0
Atchison, Topeka & Santa Fe (including P. & S. F.)	186	121	34.9
Wabash	199	130	34.7
Chicago & North Western	225	149	33.8
Reading (including Port Reading & Perkiomen)	238	158	33.6
Erie (including Chicago & Erie)	182	122	33.0
Chicago, Burlington & Quincy	200	135	32.5
Great Northern	200	135	32.5
Texas & New Orleans	157	106	32.5
Seaboard Air Line	218	148	32.1
Central of Georgia	223	153	31.4
Central of New Jersey	234	162	30.8
Atlantic Coast Line	179	125	30.2
Minneapolis, St. Paul & S. S. Marie	164	116	29.9
New York, Chicago & St. Louis	162	114	29.6
Louisville & Nashville (including L. H. & St. L.)	227	160	29.5
Chicago, Rock Island & Pacific (including C. R. I. & G.)	221	156	29.4
Southern Pacific-Pacific Lines	187	132	29.4
Southern	246	174	29.3
Michigan Central	170	122	28.2
Boston & Albany	263	189	28.1
Baltimore & Ohio	225	162	28.0

TABLE III.—Pounds of coal per thousand gross ton-miles (excluding locomotive and tender) calendar year 1930 compared with calendar year 1920—Continued

Road	1920	1930	Per cent decrease, 1930 under 1920
Chicago & Eastern Illinois	200	144	28.0
Denver & Rio Grande Western	282	203	27.5
Oregon-Washington R. R. & Nav. Co.	258	187	27.2
Pennsylvania System	181	139	26.1
Missouri Pacific	217	161	25.8
Delaware, Lackawanna & Western	155	115	25.8
New York Central (including O. C. Lines)	167	129	25.8
Oregon Short Line	212	165	22.2
Lehigh Valley	180	141	21.7
Chicago, Milwaukee, St. Paul & Pacific	158	128	19.0
Big Four Lines (Cinc. No.; C. C. C. & St. L.; E. I. & T. H.)	104	138	15.9
Elgin, Joliet & Eastern	167	148	11.4
Illinois Central (including Y. & M. V.)	165	169	12.4
Northern Pacific	89	113	27.0
Pittsburgh & Lake Erie			

1 Increase.

TABLE IV.—Operating expenses per thousand revenue ton-miles

Road	Per cent decrease	1920	1930
10 roads showing lowest cost, 1920:			
Chesapeake & Ohio (including H. V.)	41.2	\$6.04	\$3.55
Norfolk & Western	45.5	6.60	3.60
New York, Chicago & St. Louis	8.5	7.48	6.84
Oregon Short Line	12.1	7.82	6.87
Illinois Central (including Y. & M. V.)	19.0	8.31	6.73
Union Pacific	25.9	8.43	6.23
Delaware & Hudson	6.0	8.47	7.96
Elgin, Joliet & Eastern	123.5	8.60	10.62
Chicago & Eastern Illinois	119.7	8.64	10.85
Baltimore & Ohio	26.5	9.24	6.79
Average	14.2		
10 roads showing highest cost, 1920:			
New York, New Haven & Hartford (including C. of N. E.)	43.5	22.71	12.83
Texas & New Orleans	46.3	17.26	9.27
Boston & Maine	27.8	16.01	11.56
Central R. R. of New Jersey	35.0	15.61	10.15
Texas & Pacific	53.6	15.39	7.14
Missouri, Kansas, & Texas (including M. K. & T. of T.)	50.7	14.72	7.25
Atlantic Coast Line	20.6	14.64	11.63
St. Louis-San Francisco	43.4	14.18	8.03
Seaboard Air Line	32.4	13.84	9.36
Central of Georgia	41.0	13.75	8.10
Average	39.4		

1 Increase.



TABLE V.—Gross ton-miles (excluding locomotive and tender) per train-hour

Road	Per cent increase	1920	1930
10 roads showing highest record, 1920:			
Union Pacific	88.1	21,604	40,627
Norfolk & Western	100.3	21,445	42,946
Pittsburgh & Lake Erie	96.3	19,443	38,174
Chesapeake & Ohio (including H. V.)	101.9	19,323	39,020
Lehigh Valley	43.8	19,117	27,487
Michigan Central	78.1	18,985	33,438
New York Central (including O. C. lines)	72.3	18,684	32,197
Northern Pacific	36.4	18,219	24,848
Delaware, Lackawanna & Western	41.3	17,751	25,093
Oregon Short Line	50.8	17,569	26,495
Average	70.7		
10 roads showing lowest record, 1920:			
St. Louis-San Francisco	101.8	10,303	20,787
New York, New Haven & Hartford (Cent. of N. E.)	131.3	10,479	24,238
Boston & Maine	108.6	10,542	21,993
Texas Pacific	147.4	10,551	26,101
Chicago, St. Paul, Minneapolis & Omaha	54.2	10,678	16,464
Pere Marquette	105.7	10,821	22,255
Denver & Rio Grande Western	95.5	10,966	21,441
Central of New Jersey	121.1	11,285	24,961
Louisville & Nashville (including L. H. & St. L.)	84.3	11,408	21,026
Boston & Albany	72.6	11,553	19,937
Average	102.3		

TABLE VI.—Pounds of coal per thousand gross ton-miles (excluding locomotive and tender)

Road	Per cent decrease	1920	1930
10 roads showing least consumption, 1920:			
New York Central (including O. C. lines)	25.8	155	115
Chesapeake & Ohio (including H. V.)	39.1	156	95
Texas & New Orleans	32.5	157	106
Big Four lines (Cinc. No.; C. C. & St. L.; E. I. & T. H.)	19.0	158	128
New York, Chicago & St. Louis	29.6	162	114
Elgin, Joliet & Eastern	15.9	164	138
Minneapolis, St. Paul & S. S. Marie	29.9	164	115
Illinois Central	11.4	167	148
Oregon Short Line	22.8	167	129
Michigan Central	28.2	170	122
Average	25.4		
10 roads showing most consumption, 1920:			
Denver & Rio Grande Western	28.0	282	203
Boston & Albany	28.1	263	189
St. Louis-San Francisco	37.5	259	162
Oregon-Washington Railroad & Navigation Co.	27.5	258	187
Southern	29.3	246	174
Chicago & Alton	40.6	244	145
Reading (including Port Reading & Perkiomen)	33.6	238	158
New York, New Haven & Hartford (Cent. of N. E.)	48.1	237	123
Central of New Jersey	30.8	234	162
Delaware & Hudson	37.4	230	144
Average	34.1		

TABLE VII.—Average investment per mile of road owned (exclusive of improvements on leased lines)

Road	1920	1930	Per cent increase, 1930 over 1920
Texas & New Orleans	\$50,758	\$100,962	98.9
Elgin, Joliet & Eastern	85,753	159,378	85.8
Illinois Central (including Y. & M. V.)	80,176	131,590	64.1
Reading	333,262	541,677	62.5
Pittsburgh & Lake Erie	629,084	999,245	58.8
Pennsylvania R. R.	253,707	385,287	51.9
Missouri Pacific	54,109	82,045	51.6
Delaware, Lackawanna & Western	346,086	514,377	48.6
Pere Marquette	59,940	88,976	48.4
Texas & Pacific	67,623	99,048	46.5
Chesapeake & Ohio (including H. V.)	132,366	192,167	45.2
Baltimore & Ohio	172,875	248,397	43.7
Norfolk & Western	143,278	205,124	43.1
New York Central	203,577	291,182	43.0
Grand Trunk Western	83,594	119,540	43.0
New York, New Haven & Hartford (including C. of N. E.)	194,495	277,959	42.9
Louisville & Nashville	64,583	91,283	41.3
Atchafalpa, Topeka & Santa Fe (including P. & S. Fe.)	91,895	126,242	37.4
Chicago, Rock Island & Pacific (including C. R. I. & G.)	50,219	68,288	35.0
Atlantic Coast Line	41,549	56,241	35.4
Central of New Jersey	314,505	423,232	34.6
Boston & Maine	114,348	149,881	31.2
Wabash	112,880	147,801	31.0
Chicago & Northwestern	53,059	68,437	28.0
Lehigh Valley	309,808	398,363	28.6
Seaboard Air Line	55,476	71,090	28.1
Gulf, Colorado & Santa Fe	38,375	48,730	27.0
Southern Railway	97,408	123,399	26.7
Union Pacific	96,302	118,044	22.6
Denver & Rio Grande Western	70,853	85,990	21.4
Chicago, Burlington & Quincy	56,587	68,422	20.9
Erie (Inc. Chicago & Erie)	292,151	346,644	18.7
Northern Pacific	78,573	93,682	17.7
Great Northern	59,792	70,338	17.6
Delaware & Hudson	243,420	283,219	16.4
Chicago & Eastern Illinois	82,659	94,307	14.1
Chicago & Alton	179,123	203,442	13.6
Chicago, St. Paul, Minneapolis & Omaha	50,069	56,108	12.0
Oregon Short Line	56,035	62,597	11.7
Chicago, Milwaukee, St. Paul & Pacific	64,202	70,412	9.7
Missouri, Kansas & Texas Lines (Inc. M. K. & T. of T.)	86,288	93,277	8.1
Minneapolis, St. Paul & S. S. Marie	39,101	41,954	7.5
New York, Chicago & St. Louis	132,462	141,817	7.1
St. Louis-San Francisco	78,162	83,853	7.0
Oregon-Washington R. R. & Nav. Co.	81,221	86,864	6.9
Southern Pacific-Pacific Lines	88,958	95,019	6.8
Central of Georgia	(1)	(1)	(1)
Boston & Albany	(2)	(2)	(2)
Michigan Central	(2)	(2)	(2)
Big Four (Inc. Cinc. No.; C. C. & St. L.; E. I. & T. H.)	(2)	(2)	(2)

<sup>1</sup> Figures not comparable.

<sup>2</sup> Leased lines of New York Central Railroad in 1930.

The CHAIRMAN. Mr. Noxon, your time is up. If you want it, you may have a minute, if you have something to sum up. We have got to close the hearings.

Mr. NOXON. Briefly, in that minute, Mr. Chairman, my thought is—and, if I may, I would like to hand my statement to the reporter for the record.

The CHAIRMAN. You may.

Mr. NOXON. My thought is that while, as the previous witness stated, there was some strengthening of confidence among investors by the hope held out by 15a, that a counterbalancing mischief was done in raising from Maine to California, a national fight over what was called the guaranty, and that the sooner we get rid of it, get out of the law everything that looks to the investor's rights, and transfer our thoughts to the users' needs, the sooner we will be assured of the

cooperation among all concerned, for the maintenance of whatever rate level is necessary for an efficient system of transportation.

The CHAIRMAN. Thank you.

**STATEMENT OF ARTHUR J. LOVELL, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS, 510 LABOR BUILDING, WASHINGTON, D. C.**

The CHAIRMAN. Gentlemen of the committee, Mr. Lovell, of the Railway Brotherhoods, says he can complete in five minutes. Therefore, I am asking the committee to stay over for five minutes to hear him.

You may proceed, Mr. Lovell.

Mr. LOVELL. My name is Arthur J. Lovell, vice president and national legislative representative, Brotherhood of Locomotive Firemen and Engineers.

I am not only speaking for myself, but I am speaking also for Mr. W. D. Johnson, vice president of the Order of Railroad Conductors; Mr. A. F. Stout, national representative of the Maintenance of Waymen; Mr. D. C. Cone, of the Signalmen; Mr. James A. Farquharson, vice president and national legislative representative of Brotherhood of Railroad Trainmen; Mr. G. W. Longhlin, assistant grand chief Brotherhood of Locomotive Engineers, and indirectly for the 21 standard railroad labor organizations.

We have been in Chicago, gentlemen, and we have not had the opportunity to get here before.

I am going to say to you all that I have to say in that five minutes. We represent approximately 250,000 men in normal times who do the actual work on the railroads from the engine cab to the end of the train, and all the other elements in the transportation industry on steam railroads in the country.

We have just come back from Chicago, where we have made a contribution, which includes me, as well as every other man, of 10 per cent, which will amount, so it is estimated, to \$250,000,000, in the calendar year, from February 1, 1932, to January 31, 1933, which with the recent freight rate contribution or gratuity, from the Interstate Commerce Commission estimate at \$125,000,000, we believe that there will be some distinct benefit to the railroad industry.

We have never before appeared in any hearing where rate making was involved so far as I am aware. We have kept strictly out of it, as we did not think that it was any of our business; but inasmuch as we have now contributed financially to the industry, we think that we have a right to be here and say that we have never believed that section 15a was of any use.

It is a beautifully fine-spun theory, gentlemen, but like many beautiful fine-spun theories, they do not work in actual practice and the Interstate Commerce Commission has had a dozen years trying to make it work.

I am just going to read one letter, and you will understand from that the position, not only of myself and my colleagues, but of the 21 standard railroad labor organizations, because this letter is addressed to me by Mr. D. B. Robertson, chairman of that association.

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS,  
Cleveland, Ohio, February 9, 1932.**

Mr. ARTHUR J. LOVELL,  
Vice President, National Legislative Representative,  
Washington, D. C.

DEAR SIR AND BROTHER: I inclose herewith statement of Commissioner Eastman before the House Committee on Interstate and Foreign Commerce, January 18, 1932. This statement contains the views of Commissioner Eastman on the matter of repeal of section 15a of the interstate commerce act, which became law as a part of the transportation act, 1920.

I suggest that you carefully read the commissioner's views upon this subject and arrange to appear before the committee having this matter in charge and make it clear to the committee that we concur in the views expressed by Commissioner Eastman.

We should place ourselves on record as being definitely in favor of H. R. 7117, provided it is amended as recommended by Commissioner Eastman with respect to retroactive repeal of recapture, and a return of the moneys now held in the Federal Treasury to the roads which paid them in.

Section 15a has doubtless proved to be both unsound and impracticable, and it seems appropriate that H. R. 7117 should be enacted into law with an amendment to provide for retroactive repeal for recapture. Doubtless whatever is done to assist the railroads in the present difficult situation will reflect as a benefit to the public.

I suggest that you confer with your associates at Washington and undertake to handle this matter while the hearings are in progress.

Fraternally yours,

D. B. ROBERTSON, President.

Presumably all members of the association have concurred in the expressed views of Commissioner Eastman.

Thank you, Mr. Chairman.

The CHAIRMAN. We are very much obliged to you, Mr. Lovell.

The committee will now stand adjourned until 10 o'clock to-morrow morning.

(Thereupon, at 11.52 o'clock a. m., the committee adjourned, to meet at 10 o'clock, a. m., the following morning, Friday, February 12, 1932.)

## RAILROAD LEGISLATION

FRIDAY, FEBRUARY 12, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D C.*

The committee met at 10 o'clock a. m., Hon. Sam Rayburn (chairman) presiding.

The CHAIRMAN. The committee will come to order.

### STATEMENT OF HON. ERNEST I. LEWIS, COMMISSIONER, INTER-STATE COMMERCE COMMISSION

The CHAIRMAN. We have this morning, Commissioner Lewis, who has been asked to come here to speak, especially with reference to valuations, and he has his own statement.

Mr. Commissioner, you may proceed in your own way.

Commissioner LEWIS. In a preliminary way I might say that my name is E. I. Lewis, and I happen to be the commissioner who, for a period of about nine years, has had that rather undesirable job of being the point of contact between the commission and the Bureau of Valuation. The title, I think, is rather a misnomer. It says, commissioner in charge.

But, you can presume that I should be informed as to the bureau of valuation and the work thereunder.

I appear this morning, however, at your invitation, Mr. Chairman, I believe.

The CHAIRMAN. Yes, sir.

Commissioner LEWIS. In behalf of the Interstate Commerce Commission.

The purpose of my appearance is to state that the Interstate Commerce Commission, by unanimous vote, is opposed to that part of the proposed amendment to H. R. 7117, laid before you by Col. Alfred P. Thom, which provides for repeal of section 19a and to the proposals of text which he suggests to take its place.

Second, I am laying before you, with approval of 10 of the 11 commissioners, suggested changes in the text of section 3 of H. R. 7117, introduced January 6, by you, Mr. Chairman. The eleventh member, Commissioner Mahaffie, does not object to the purposes for which the changes are designed. He is of the opinion that they are unnecessary, that the power that we desire, or the matter which we desire to be clarified, are sufficiently provided for in the existing text.

We are here considering fundamental changes—even abandonment—of a law that was designed to be permanent. We all recognize the unusual condition now prevailing, not only in this country, but world-wide. We all recognize the distress of many carriers.



But, should we be carried, under these conditions, to making changes in the law of a permanent character to apply to normal times, when they return, that we would not make in what may be termed "normal times?"

The commission looks back to a period 30 years ago, when it was not equipped with a valuation department, when—as a matter of fact, no one, not even the carriers, had any definite idea of the property of the railroads or their value. The states had begun to demand that they be equipped with this information, which they considered as a necessary tool in the matter of taxation of the railroads, and also necessary in the effective regulation of all public utilities, including railroads.

A popular and general understanding of the origin of the valuation act of 1913 is that it was designed, and put through Congress under the leadership of the late Senator La Follette, to reveal vast amounts of "water" contained in the outstanding securities of the carriers, in order that the shippers and the public might be relieved of rates necessary to carry this unwarranted burden, if it existed. These certainly were the reasons for the demand for valuation, which caught the public eye and generally come to mind when valuation is generally mentioned.

But, back and beyond the general or popular movement for valuation, the Interstate Commerce Commission began to assert that valuation of the carriers which were under its regulation, was vitally necessary. This demand by the commission for valuation as a working tool and as a defensive weapon in litigation goes back, in fact, to 1888. But, it did not begin to take concrete form and to be pressed by the commission until the year 1903. There was a full 10 years of demand by the Interstate Commerce Commission for valuation before the valuation act was enacted. The commission said emphatically through those 10 years that what it needed was value.

Without straying too far into collateral history, I simply wish to call attention to the fact that in 1898 the United States Supreme Court, in rendering its decision in the famous case of *Smyth v. Ames* (169 U. S. 466), declared that "the basis of all calculations as to the reasonableness of rates" must be the fair value of the property employed in the public service. That is hardly literally, or an exact quotation, but that is the purport.

I have not seen the court in the intervening years getting very far away from that decision.

If, therefore, valuation was to be the basis of all calculations as to the reasonableness of rates, or if it was to constitute the underlying measure of the amount of profit which the carriers were entitled to exact for their services, it became fairly evident that any Government tribunal set up for regulatory purposes would be seriously handicapped unless this measuring rod was in its possession.

I want to read briefly now from the Seventeenth Annual Report of the Interstate Commerce Commission, which covers the year 1903:

Among the subjects which deserve the attention of the Congress is the need of a trustworthy valuation of railway property \* \* \*

There are two leading reasons why an authoritative valuation of railroad property is of increasing importance. In the first place the judicial rules for the determination of reasonable rates for freight and passenger traffic, so far as those

rules have been laid down in the decisions of the courts, include and lay stress upon the fair value of the roads whose rates are the subject of complaint. \* \* \*

It is sufficient for the present purpose to state that no tribunal upon which the duty may be imposed, whether legislative, administrative, or judicial, can pass a satisfactory judgment upon the reasonableness of railway rates without taking into account the value of railway property. This is so not only because of the nature of the question involved, but especially for the reason that the courts have held in numerous cases that an enforced rate so low as to deprive the carrier of its property, that is, broadly speaking, the right to a reasonable return therefrom, is repugnant to the Constitution. \* \* \*

Another reason for such a valuation is scarcely less important. Closely connected with the question of reasonable railway rates stands the question of reasonable railway taxation.

Then, there is some discussion. And then, further down, we find:

No one acquainted with the practice of American railway accounting, so far as the balance sheet is concerned, can maintain for a moment that the book-keeping statement of cost is a correct indication of present values.

The commission also pointed out the weakness and futility of the so-called "stock and bond plan," that is to say, the acceptance of the judgment of the market place indicated by the price it pays for stocks and bonds. The commission showed that it did not afford a measure of value. The preference of the commission was for "the third method of valuation," which may be termed the inventory method. That was the method finally adopted.

I jump now from 1903 to 1907 for the next quotation, which is taken from the twenty-first annual report of the commission, and I think I will eliminate all except the last paragraph.

From whatever point of view this question of valuation is regarded, whether of reasonable capitalization, of a reasonable schedule of rates, of effective administration of the depreciation accounts, or of the correct interpretation of the balance sheet, one is forced to conclude that an authoritative valuation of railway property is the next important step in the development of governmental supervision over railway administration.

And then, in its next annual report, the year 1908, the commission again directed attention to previous reports and expressed the opinion that "it would be wise for Congress to make provision for a physical valuation of railway property" and stated that the change which had gradually taken place in the past few years, as well as the increased responsibilities imposed upon the commission by the amended act made continually clearer the importance of an authoritative valuation of railway property, made in a uniform method for all carriers in all parts of the country.

The new contribution to the reasons for the necessity for the physical valuation is in the following language:

There is a growing tendency on the part of carriers to meet attacks on their rates by making proof, through their own experts and officials, of the value or the cost of reproducing their physical properties.

It cited its experience in the so-called Spokane case, in which the Great Northern and Northern Pacific, "apparently at the expense of much time and labor, compiled elaborate and detailed valuations and offered them in evidence before the commission in defense of the rates of which complaint had been made." Then follows the interesting observation:

It is obviously impossible for shippers who are the complainants in such cases to meet and rebut such testimony, or even intelligently to cross-examine the railroad witnesses by whom such proof is made.

The commission cites the expense of retaining experts competent to make such investigations and pointed out that even if they were retained "neither the shippers nor their experts and agents under existing statutes have any right of access to the property of carriers, or to their records showing the cost of construction and other necessary information."

The 1908 report also calls attention to "the importance which the question of capitalization has assumed in recent years" and makes the interesting observation that—

No one at the present time can say whether railways are undercapitalized or overcapitalized, \* \* \* or which are undercapitalized and which are overcapitalized. \* \* \*

A third argument in support of the plan of an authoritative valuation of railway property is found in the present unsatisfactory condition of railway balance sheets, \* \* \* No court, or commission, or accountant or financial writer would for a moment consider that the present balance-sheet statement purporting to give the "cost of property" suggests, even in a remote degree, a reliable measure either of money invested or of present value.

A fourth reason brought forward was that there should be an ascertainment of assets to serve as a reasonable limit of stock and bond issues from the point of view of sound corporation finance.

In closing its 1908 recommendations to Congress, the commission stated:

When one holds in mind how persistently the courts oppose the enforced approach of railway tariffs to the line of confiscation; when one comes to realize how eager the carriers are to restore to their property accounts the value of the improvements of past years, paid for out of revenues; when one clearly understands that so long as railways which operate on different levels of cost continue to compete for the same traffic, there must result a permanent differential profit to the more fortunate road, and finally, when one reflects upon the fact that securities once issued are, ordinarily beyond recall and beyond control, it is difficult to see how one can assert that the kind and amount of securities issued by a public-service industry have no bearing on the problem of railway tariff as that problem must be regarded by the commission and by the courts. \* \* \*

The commission clearly indicated in these reports that it did not expect the proposed physical valuation to supply the only answer required in the determination of reasonable rates. Again, the commission had no preconception as to what such a valuation would show as to the reasonableness of capitalization or of rates. It wanted valuation in order to fill out its accounting or publicity program and as a light to guide it in its rate-making and supervisory activities.

The helplessness of the commission as a regulatory body to enforce its rate orders is revealed by the following statement in its annual report to Congress in 1909:

There is, in our opinion, urgent need of a physical valuation of the interstate railways of this country. In the so-called Spokane case the engineers of the Northern Pacific and Great Northern Railways estimated the cost of reproducing those properties in the spring of 1907. In the trial of pending suits brought by the above companies to enjoin certain rates upon lumber which the commission had established from the Pacific coast to eastern destinations, these same engineers have again estimated the cost of reproduction in 1909. The estimates of the latter year exceed the estimates for 1907 by over 25 per cent.

That is a jump of 25 per cent in two years.

There is no way by which the Government can properly meet this testimony. Even assuming that the valuation of our railways would be of no assistance to this Commission in establishing reasonable rates, it is still necessary, if those rates are to be successfully defended when attacked by the carriers, that some

means be furnished by which, within reasonable limits, a value can be established which shall be binding upon the courts and the commission:

The question of valuation was again brought prominently to the front in the Eastern and Western Rate Advance cases, in 1911, when the commission pointed out the paucity of its information and power to gain information of value which it deemed absolutely essential. Judge Prouty, who wrote the decision in the Eastern Rate Advance case, called loudly for "some solid ground on which to stand."

So matters stood at the time of the enactment of the Federal valuation act in 1913.

The desire of the commission, the purpose of Congress, was to get an inventory valuation of the property dedicated to and used in public service and to ascertain and keep-itself currently informed of value. The commission, at least until new bases for rate making are tested by litigation and are approved, desires that it continue to have information, data and records necessary to an authoritative valuation of these properties.

From 1913 to 1920 the valuation act stood as a segregated, detached piece of legislation. The work of inventorying the carriers' property had gotten underway in 1914, and, of course, underwent the dislocations and difficulties incident to war. But the work was considered so vital that even in wartime, when the country was skimping on everything else to meet the exigencies of war, the valuation staff was held to its work. In 1916 there were 1,480 employees, in 1917 there were 1,562, in 1918 there were 1,573, and in 1919 there were 1,530.

In 1920, Congress took the valuation act and made it the cornerstone of the present regulatory structure.

The commission, under the valuation act of 1920, is charged with regulation of a vast amount of property—its value totaling many billions of dollars, and whose proper functioning, financing, and general conduct is absolutely vital to the welfare of the country. Should such duty be imposed without the body responsible for its administration being afforded an authoritative current inventory of the assets of the corporations—and their value—which are subject to its various powers of regulation?

Now, moving to Colonel Thom's substitute for section 19a. It is very concise. It reads as follows:

The commission shall carefully preserve in its archives all documents and papers connected with work so far done by it under said section and shall hereafter keep itself informed of all new construction, extensions, improvements, additions, betterments, and retirements, and of all changes in investment therein.

The act which the proposal would repeal constitutes a mandate to the Interstate Commerce Commission to investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to its regulation. It also provides that, when ascertained, such valuation shall be prima facie evidence of the value of the property under the act and in all judicial proceedings for the enforcement of the act and in all judicial proceedings brought to enjoin, set aside, or suspend any order of the commission.

That would be killed.

Section 19a contains specific provisions as to the method of or basis for determining value. Among other things, it provides for (1) an inventory of property. In conformity with that mandate we have

gone out and have inventoried all of the property of the railway carriers—gone over their ties, and their rails, equipment, terminals, and every bit of their property. By various orders of the commission we have been and are keeping records of changes in their properties since the date of original inventory. As a result, we are in position to correct the inventories down to the end of the year 1927.

I say approximately, because there is some lag.

On the other hand, some of these underlying reports for the correction of the inventories and bringing them down to date, have extended beyond 1927. This is the result of our recapture work. The work of correcting inventories is being pushed.

Now, the second thing that the Congress gave us, was a mandate to go forth and classify the property for its various purposes. It was necessary that the property be classified as to carrier and noncarrier use.

The third mandate was to investigate the costs of property. That is, first as to original cost to date; second, the reproduction cost of this property new; third, the cost of reproduction, less depreciation—taking out the depreciation; and fourth, all other, if any, elements of value.

The next mandate was to ascertain and report the original cost and present value of lands, rights of way and terminals.

The next direction was to cover the corporate history and organization of these carriers; increases and decreases of stocks, bonds, or other securities; net and gross earnings; expenditures of all moneys and the purpose for which the same were expended, and finally to ascertain and report aids, gifts and grants of right of way, or donations.

Colonel Thom's proposal would seem to provide for only a book-keeping record of new construction, extensions, improvements, additions, betterments, and retirements, superimposed on the records that the commission has at this time, and of "all changes in investment therein."

This proposal is certainly ambiguous, but it seems to be a complete switch for the future from value to a record of investment. It leaves us in the dark as to how we shall keep ourselves informed and to what extent we could require the carriers to give us information.

Here are a few things that, if Colonel Thom's proposal is made law, would, it would seem, go into the discard.

(1) The commission would soon have no inventory of the railroad properties. There is nothing in which obsolescence is so rapid as in inventory of railroad property, and for our own use, and certainly when we get into the courts, the only valuation that is of any good at all, is one that is approximately current. In other words, we would soon be back where we were in 1900, without inventory or value.

As I understand his proposal—I do not know whether this interpretation is correct, if we had an inventory it would seem to be limited to changes that were reported by the carrier which the commission seemingly would have to accept without policing or checking in the field, for there is no provision for such policing.

While the reports of the carriers have been greatly improved since 1907 when uniform accounting came in, still we find in our work that there are wide discrepancies in the property reports of at least many of them.

Vast changes are continually going on in the property of the carriers. There are being poured into these properties, and there have been poured into them large amounts during the last decade. The investing public has poured into them all of the way from a half to more than a billion dollars a year. As that pouring in goes on, there also is coming out retirements which have got to be extracted from the inventory of the property in keeping it up to date.

A very good indication of the vast changes is afforded by an address of Mr. L. F. Loree, president of the Delaware & Hudson, from which I quote the following:

As I see the railroad conditions of the United States, I think there are at least 30,000 miles of track that should be abandoned. It no longer pays the community to support that mileage, which has become economically useless and therefore socially wasteful.

I have been surprised to find how many buildings the railroads own. We took a count of the buildings on this railroad—

That is the D. & H.—

Some, of course, are shabby, mere shanties; but some are quite palatial structures. We had, however, 1,832 buildings, of one sort or another, that we had to take care of. We have been systematically weeding out those that were superfluous. When we remodeled the Oneonta shops, we got rid of 51 buildings; at Carbondale we got rid of 20 this year, and building after building has come down with no loss and considerable saving until now the number is 16.3 per cent less. \* \* \* In a general way, there must be about 375,000 buildings used by the railroads in the United States and; perhaps, it wouldn't be out of the way to say that 75,000 could be abandoned.

We are all conscious of the fact—and the commission recognized it in its recent report in the matter of the application of the carriers for a 15 per cent increase in freight rates—that there must of necessity be very great changes in the property of the carriers to meet new competitive forms of transportation. With such great changes going on in the properties which it regulates, the commission is in need of authoritative information of what those properties are and the changes occurring therein, and how the retirements as well as the additions affect inventories and valuation. I do not believe that you are quite willing to rest on such a report as the carriers themselves might make covering these changes. The commission does not imply bad faith on the part of the carriers making the reports. Such reporting is very technical and easily subject to errors; and many carriers are poorly equipped to make accurate reports or to place charges in proper accounts or classifications—carrier or noncarrier. It would seem that at least the governmental regulatory body should have the same latitude of inspection that obtains in the matter of inspection of national banks. That is, we should have the authority to send our people into the field to see what the changes are, and properly to check the reports made to us by the carriers.

The second provision of the present law is that we shall classify the property. The Thom proposal does not mention classification. A great deal of the property that the carriers own that is properly a part of their assets, is not, however, used in the service of transportation rendered to the public. This was foreseen by Congress and it provided for carrier and noncarrier classification. We carefully note changes which take property out of common-carrier service into non-carrier service, or vice versa. We are of the thought that such property changes as affect classification should also be subject to inspection.



tion to the end that we may have property inventory of the property devoted to the public service.

It would seem that under Colonel Thom's proposal the reports of carriers would in time probably afford us a record of original cost. Replacements over a period of years, with accurate record of the cost of such changes and with deductions for retirements, would in time give us practically a complete record of investment and original cost. But again the commission is of the thought that if we are to come to original cost or investment instead of value, the records should be kept in such manner as to be above suspicion of inaccuracies. Therefore, it would seem necessary for some agency to check these records. But this is not provided for.

Colonel Thom's proposal, as I read it, would leave out of consideration absolutely all studies as to cost of reproduction new.

There is in his proposal no suggestion of keeping ourselves informed of the depreciation that accrues in the property. The suggestion is in entire accord with the position taken by most carriers in the valuation and recapture proceedings before us. They insist that there is no depreciation in a well maintained property. The commission, following the decisions of the Supreme Court of the United States, beginning with the Knoxville Water case (212 U. S., 1), has not been able to accept that theory.

In eliminating value from the records we are to keep, Colonel Thom, of course, seems to sweep aside the question of "all other, if any, elements of value" which the present section 19a requires us to consider.

If adopted, Colonel Thom's proposal would drop out of consideration the value of lands and rights of way. Of the other hand, the Supreme Court has laid down in the Minnesota Rate cases (230 U. S., 434) the rule for the valuation of lands and rights of way.

There would be eliminated the corporate history and organization records. However, this work is completed up to date and the only question which would arise is whether records should be kept of further changes.

The same observation applies with respect to increases and decreases of stocks, bonds, or other securities.

There would be the elimination of the provisions covering net and gross earnings and of expenditures of all moneys and the purpose for which the same were expended. These matters, of course, are covered by other activities of the commission and the Bureau of Valuation and the commission rely on these sources largely for this information.

Colonel Thom's proposal would probably leave us, it seems, without a further record of aids, gifts, and grants of right of way, and other donations.

It is the opinion of the commission that such records as the Thom proposal, if accepted, would produce, would be insufficient for the commission's needs.

There has been a vast amount of concentration on repeal of 15a and change or repeal of 19a. It is feared that there has not been complete penetration of what is involved by such changes. There is not only the statutory provisions of the Interstate Commerce Act to consider, but also the general law which confronts us in the discharge of our regulatory duties.

The repeal of section 15a would, so far as the statute is concerned, dispose of the provisions for fair return based on value, and the recapture of excess earnings. But, beyond the statute stands the law of the land. I repeat, in 1898, the Supreme Court, in *Smyth v. Ames* (169 U. S. 466), declared value to be the "basis of all calculations as to the reasonableness of rates."

In the pending bill (H. R. 7117) a new statutory direction for rate making is proposed. It is assumed that with recapture eliminated it is more than doubtful if carriers will ever find it necessary or advisable to bring the constitutionality of such legislation to the Supreme Court for determination. Appeal to the courts will not, however, be foreclosed. It is not at all unlikely that a demand for rates based on value may come, not from the carriers, but as it did in the Nebraska litigation in the 1890's, on the initiative of those who may rise up in the rôle of defenders of the public interest when the cost line of reproduction, which has been on a precipitous down grade, passes and falls below the investment line—which it is now doing as to some roads. We do know that in railroad construction there is going on the same disturbance that is generally prevailing all over this country, and all over the world. There are a few units in the cost of construction of railroads that is not varying to any considerable extent. The first and outstanding one is steel rails. They seem to be pegged at the same price since 1923.

Mr. MAPES. May I ask a question?

Commissioner LEWIS. Let me add one more; and the other that is not showing any very great variation, is the price of equipment.

Mr. MAPES. I would like to ask what percentage of the total cost of construction is in the cost of rails.

Commissioner LEWIS. May I answer that a little later. We have it. That is getting down to considerable detail, but I will bear it in mind.

Now, diverting for a moment to another very important element—grading. The unit price for grading has dropped already to practically 1914 levels. I might say to you that that has not been entirely due to change in price of labor. This item will serve to show the penetration of the valuation work. We get copies of all contracts that are let. Thus we know what is going on in all branches of railroad construction. We have a cost branch, or activity, that keeps in touch with all these things—all of these contracts.

Reverting to the item of construction of roadbed: There is a tremendous drop from the peaks of the 1920's not only because of possible general reduction in wages, and other costs, but by the introduction of machinery.

Some years ago roads were built by the scraper method—manual labor, we might say. There would be camps of road construction men; large construction camps full of roadmen, horses, and mules.

Now, that work is done with steam shovels and trucks. Those steam shovels and those trucks as the work progresses at the same time compact the road bed. That compacting may in itself lessen the initial cost, particularly in the time that is necessary to be allowed in the matter of permitting the fills to settle. That would cover the construction period of the road and raise the question in studies of cost to reproduce of shortening the interest-during-construction period.

Of course machine construction is, in itself, less costly than manual methods.

Taking the whole picture and balancing it into averages, railway construction cost, reached its peak, we will say, in about 1920. While costs varied in various sections of the country, we will say that taking 1910-1914 as the base or 100 per cent line, there was a peak of 223 in the year 1920. There was a heavy drop in the year 1921, and in the year 1922, and then a rise in the year 1923 and another slight drop in 1924, and then the line commenced to flatten out, between 168 and 165 between 1925 and 1929. In 1929 however it began to sag somewhat and in 1930 there was a drop. For the year 1931, the average line dropped to about 152. There has been a further depression of that line. I have not got the figures before me. It is however, below the 150 line. That would, as compared with the basis 1910-1914, mean that the cost of railroad construction, reproduction, was in 1931 about 50 per cent over that base.

Now, Mr. Mapes, answering your question—Mr. Wilkinson, who is my assistant here, has made a hurried check and tells me that rails are about 10 per cent of the money spent in construction. I can not answer more definitely, but if you would like for us to give you more definite information, I will be glad to supply it for the record.

Mr. MAPES. That is definite enough for me.

Commissioner LEWIS. Thank you. I might add that equipment, taking the railroads as a whole, account for another 23 per cent. I remarked that equipment costs had not dropped much. So you see that steel rail and equipment costs are largely responsible for the cost of reproduction index remaining above pre-war costs.

I think that, by what I have previously told you, you can get some conception of the detail of this work. I am going to divert right now—I see that time is passing quickly—to lay before you something of the present status of the work.

As I approach that matter, I must tell you, that my connection with the commission dates from 1921. For four years before that I had been on the Indiana commission, as chairman. But what happened in the Federal work before 1921 is all a matter of either record or hearsay with me. I understand that when this work was begun the general thought was that it was going to be a small undertaking—an underestimation such as we indulge in when we enter into wars, thinking that they are going to be of short duration; we generally do not have much knowledge or appreciation of what it will be.

I believe Congress started out with the thought that the work was going to cost about \$3,000,000 and that it would be done in about two or three years. And, possibly, that might have measured the original needs or desires of some persons; but the law was elaborated. It became a most detailed mandate. It called for a vast amount of detailed work. Now 18 years have passed. When I was before the appropriation's subcommittee the other day I gave the total expended by the Government. It is a few thousand dollars less than \$42,000,000.

The CHAIRMAN. You mean that is the total that the Government has expended?

Commissioner LEWIS. That is the total of the Government's expenditures. The carriers say—I think Colonel Thom's statement the other day was—that they have spent \$137,000,000. I am not

sure of that, but he can correct me if that is not right. Those are round figures. He thought that the total, therefore, had run up to \$177,000,000.

I think our record of Government expenditure is absolutely correct. We have the records of appropriations and expenditures, and what was returned to the Treasury, year by year; but I do not believe that the carriers' records are quite complete, because it seems to me their charge if \$137,000,000 may not be so accurate.

Mr. HUDDLESTON. May I ask you a question?

Commissioner LEWIS. Certainly.

Mr. HUDDLESTON. Why has it cost the carriers so much more than it has cost the Government?

Commissioner LEWIS. Will you let me finish just this one thing?

Mr. HUDDLESTON. Yes.

Commissioner LEWIS. I would like to finish it first. I have had several contacts recently that have rather opened my own eyes, that cause me to make this observation.

A lot of the valuation records are records that the corporations would have to keep, involving work that they would have to do anyway. Many of the valuation reports that they have to make are reports that they have to make to the commission and probably other regulatory bodies—State bodies—anyway. And, in some instances, I venture to say that those are charged to valuation. I struck one the other day—I do not care to mention the railroad—to find out to what extent that is the fact.

The carriers have expended a great amount of money, but I would rather be inclined to think that \$137,000,000 would be too much to charge to valuation.

Now, in answer to your question, Mr. Huddleston: The carriers were vitally interested in getting correct inventories of their properties. They put their men out in the field with our men, and together we measured the rails and counted the ties and bolts and everything else under the sun, all over this country. We got an absolutely complete inventory, and that, of course, called for a heavy expenditure. I do not know why it called for any more expenditure on the part of the railroads than it did on the part of the Government. We had fifteen hundred or sixteen hundred people out every year, you know, during the war period. However, there was heavy expense.

Then, there was an expense, a very large amount of expense, due to the fact that there has been a tremendous amount of litigation; then, in addition to all of that, we required the carriers to keep records continuously under order No. 3, as we call it, of all changes in their property, and report the same to us. These reports cover the changes since the date of that primary valuation field investigation.

Now those, as I just for the moment think of them, are the obligations that have been laid on the carriers. It may be that they are charging the expenses incident to recapture to valuation expense. Some of our \$42,000,000 is attributable to that work and litigation. I am not charging that their statement is incorrect, but it seems to me that \$137,000,000 is a pretty hefty figure;

Mr. SHALLENBERGER. Mr. Commissioner, do you think that this great expenditure of money has been one that has resulted in benefit to the public?

Commissioner LEWIS. I do, and I am going to come to that right now. I might as well come to it now as any time.

We are getting down now to the more interesting and practical aspects of this activity.

First, I want to correct some impressions that might have been instilled in your minds, not by any design but growing out of the general thought that has prevailed for a long time in this country. It is that this primary valuation, was so great an undertaking that it would never be completed; and is not completed. In the last statement they are correct. It is not completed.

We now have left, however, only nine reports to issue, out of a total number of corporations, as I recall, Colonel Thom, of something less than 2,000, about 1,950, when we started this work. Three of those unissued reports are in the hands of the commission; four are under review; and two are being drafted by the bureau of valuation. So far as the bureau of valuation is concerned, this primary valuation is 99.99 per cent complete.

I want to make another statement, too, so that there will be no misunderstanding. Besides those nine systems or roads that the commission has to get out final reports on, there are 196 roads that we have issued no reports on. I want to explain that fully to you, so that there will be no misunderstanding.

The inventorying of the roads included in the original primary valuation was completed in 1921. In fact it was really completed in 1920; one or two roads, I believe, came in in 1921, possibly three.

Our field force was then brought into Washington, and the primary valuation inventorying was ended, so far as field work was concerned. Along about 1925 or 1926, we became conscious of the fact that a number of the roads had escaped the drag net of valuation in that original inventory program. They were trifling roads. We also found that there were a number of other roads that had come into existence since the field work was ended. These were not extensions of roads, such as the Seaboard Air Line in Florida, but were small roads.

Therefore, in 1927, I think it was, we put our people into the field during the summer to inventory those roads. We have all those records—the field underlying work is all done. The reports are not served for various reasons. I do not want to disclose at this time. One reason, however, is that by order of the commission Division I, on July 18, 1929, ordered the Bureau of Valuation to give precedence in its work to recapture cases. These 196 carriers total only 5,843 miles, and cut absolutely no figure, when we come to consider the railroads of this country, which total 250,000 of main line and 400,000 miles of all tracks.

We have all of the information. We have all of the basic inventories. We can include them in any valuation we want to make of the railroads as a group, or as a whole, if occasion arises.

Mr. SHALLENBERGER. Mr. Commissioner, do you contemplate that the expense will be the same in the future as it has been in the past?

Commissioner LEWIS. No.

Mr. SHALLENBERGER. You will reduce your expenses?

Commissioner LEWIS. Yes. You are right about that.

The CHAIRMAN. What was your question, Mr. Shallenberger?

Mr. SHALLENBERGER. I asked if the expenses were going to be the same, or if they were going to be reduced.

Commissioner LEWIS. I have got that right here.

Mr. SHALLENBERGER. The total?

Commissioner LEWIS. Suppose that I give you the figures. Now, our appropriation for this year, 1932, is \$3,554,368. We have, however, in response to a request on all departments of government to curtail expenditures to meet the Government's serious financial situation, committed ourselves to a saving of \$300,000, so we are spending not more than \$3,254,368.

Mr. Shallenberger. For valuation?

Commissioner LEWIS. Yes. For valuation and the Bureau of Valuation's work in recapture, too.

Mr. SHALLENBERGER. What was it in 1920, when you had all of those men employed?

Commissioner LEWIS. The first appropriation was \$100,000 in 1913 which, I take it, was to get organized. In 1914 it was \$489,027.09. In 1915 it was \$2,330,518.90. In 1916 the appropriation was \$3,000,642.61.

The appropriation for 1932 was \$3,554,368.

Mr. SHALLENBERGER. It was about the same in 1916 as it is now.

Commissioner LEWIS. In 1917 the appropriation was \$3,500,000; in 1918 it was \$3,500,366.21; in 1919 it was \$3,570,084.74; in 1920, \$3,000,000; in 1921, \$2,750,000; and then came the economy program which prevailed for a number of years, and we were cut down then to, in 1922, \$1,750,000; in 1923, \$1,300,000; in 1924, \$1,250,000; in 1925, \$1,063,930.35; in 1926, \$1,882,941.65; in 1927, \$1,427,960, plus an unexpended balance for 1926 of \$287,180.97; making a total for 1927 of \$1,715,140.97.

And then in 1928 the Appropriations Committee and Director of the Budget began to take an interest in completing this work. In 1928 the appropriation was raised to \$2,563,214.

In 1929 the appropriation was \$2,200,000, with an addition of \$136,670 secured under the Welch bill.

In 1930 the appropriation was \$2,539,000, which included an unexpended balance for 1927-28; in 1931 the appropriation was \$3,547,313, and in 1932 the appropriation was \$3,554,368.

Those last increases were attributable to two reasons. One was to finish up the 19a work and the other was to take care of recapture. That answers your question?

Mr. SHALLENBERGER. Yes. If the expenses were what your figures indicate, I was wondering if, as often happens with many bureaus, after we get the thing started we never can stop it.

Commissioner LEWIS. This question was asked me by Chairman Wood the first year that I was before him. That was in the House committee. He asked when the work would be completed and the answer was that it would never be completed, because the law provides for a continuing activity.

The same question was asked in the Senate Committee, by Chairman Smoot, and the answer was the same.

This 19a valuation work under the provisions of the law as it now stands, is a continuing work. The act directs that when we have completed the primary valuation the commission—

shall keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall



ascertain the value thereof, and shall from time to time revise and correct its valuations \* \* \*

Mr. MAPES. What will be the approximate cost of continuing the work after the primary valuations are completed?

Commissioner LEWIS. The valuations would never be completed as the law now stands, but I think I can answer your question. If we are able to bring these records, 19a records, to date, which we think we can do in 1934, and if recapture is not continued we think we can cut our staff at least in two. Does that answer your question?

Mr. MAPES. Yes.

Commissioner LEWIS. Now, I am just getting along to where we are at this time. We have these primary valuations completed, we will say. We have all of the information that is necessary for us for certain purposes which I am going to explain.

We have the records of property changes since the primary valuations over a very large part of the property. At all events, we know that the valuation we now have has passed out of the academic stage and become a practical thing—a reality, as I see it, and as the commission sees it. In the hearings recently held on the petition of the railroads for a 15 per cent increase in freight rates, there was introduced in the record by the bureau of valuation, Exhibit No. 15. This exhibit gives us all of the studies and records that would be before the commission to consider in its exercise of that informed judgment which we are to apply in the fixation of value of an individual property, and the aggregate value for the properties as a whole or by groups.

That exhibit covers the country as a whole. It also shows the division into various districts—the eastern, southern, and the western districts. Then the western district is subdivided into the northwestern, central western, and the southwestern regions.

The eastern district is divided into the New England region, Great Lakes region, central eastern region. The southern district is divided into the southeastern region and the Pocahontas region.

The exhibit included studies of reproduction as of December 31, 1930, at 1930 period prices; reproduction as of December 31, 1930, at 1931 spot prices; estimated original cost of all property except land as of December 31, 1929; net increase in investment in road and equipment for the year ended December 31, 1930, original cost of all property, except land, as of December 31, 1929, reduced in proportion to depreciation; working capital, including material and supplies as of December 31, 1930; present value of lands and rights as of dates of primary valuation; estimated value of lands and rights used as of December 31, 1930; summary of aids, gifts, grants of right of way, or donations used as of December 31, 1930; summary of aids, gifts, grants of right of way, or donations owned but not used as of December 31, 1930; summary of aids, gifts, grants of right of way, or donations used as of dates of primary valuation; summary of aids, gifts, grants of right of way, or donations owned but not used as of dates of primary valuation, and data relating to State and Federal land grants as of dates of primary valuation.

So, the commission had before it, to a much greater extent than in 1920 when the new rate structure was designed, the underlying facts and studies used in a consideration of value. No one in the Ex parte 103 proceeding—and there were 660 appearances challenged these

studies and data. No one seemed to want to take issue with those figures.

It is true that the carriers had presented an "emergency case." It was a revenue case. And, they said to us that they were not asking for a full return on their property value. Therefore, it is to be presumed that they did not see fit, as a part of their case to even refer to valuation. None of the shippers took issue with Exhibit 15. But there it was.

I now want to say to you that the bureau of valuation is now in a position to lay before the Interstate Commerce Commission, in 60 days, those studies which would be necessary for it to make a valuation of the carriers as a whole, or by groups. But at this time the bureau of valuation is not in position to lay before the commission such studies on all individual railroads. The reason is that the records for the period between the primary valuation and the present are not yet checked for all carriers, and will not be checked, we will say, until the year 1934.

I repeat it, that when we have reached that point of completion we would cut this valuation appropriation in half.

The CHAIRMAN. Mr. Commissioner, let me ask you this: You say you have, on practically all of the roads, what you call the primary valuations?

Commissioner LEWIS. Yes.

The CHAIRMAN. Which means, or you mean by that, that it is practically complete?

Commissioner LEWIS. Yes; I mean by that the primary valuation which I have detailed represents the work we have accomplished by going out in the field and inventorying these properties, going out in the field and getting their accurate corporate history; going into the field and valuing the lands; and since then bridging the gap between the date of that primary valuation and the present to the extent that I have indicated, all but 10 of the valuation final reports on these carriers are issued. We are getting the reports of the carriers on all changes in their property. In that way we are in position to correct those inventories, and bring them up to date.

It is just obvious that we could not put out in the field parties again to inventory these properties. The Government would not stand for the expenditure necessary and should not stand for it, and the work is of such magnitude that it would take years. By keeping up the reports, covering changes and properly policing them, we can keep that data so we can correct our inventories and produce practically current inventories. We have, as I repeated the other day before the Appropriations Committee, some 321 people in this field work at the present, checking changes in the property which aggregate from a half a billion to more than a billion dollars of new property a year and the retirement of many millions of old property.

The CHAIRMAN. May I ask you this: Since that has been done, part of it prior to the decision of the Supreme Court in the O'Fallon case, what effect is that going to have upon the work that you have done?

Commissioner LEWIS. My answer would be to you, none. The O'Fallon case did not deal with the work that we had done, but with the decision which we had reached. The court indicated that we had not given sufficient or any consideration, I believe, their impression

was, to the factor of the cost of reproduction. The O'Fallon case was decided by the commission on the lines of investment.

The court did not disturb the underlying records.

Mr. SHALLENBERGER. Your records, Mr. Commissioner, include the cost of reproduction?

Commissioner LEWIS. Oh, yes, sir; and I have that right here.

Mr. SHALLENBERGER. The decision was not that you did not have it, but that you did not give consideration to that factor.

Commissioner LEWIS. That is right. Their interpretation, at all events, was that we had not given consideration, or at least, not sufficient consideration to that factor.

The CHAIRMAN. Well, was it a question of degree, as to how much consideration you had given, or that you had given none?

Commissioner LEWIS. I think the interpretation of the court was that we had not given it consideration.

The CHAIRMAN. In fact, had you?

Commissioner LEWIS. Well, at all events, some commissioners would not agree with the court that we had not.

The CHAIRMAN. How is that?

Commissioner LEWIS. Some of the commissioners would not agree that we had not given it any consideration.

The CHAIRMAN. Some of you thought you did?

Commissioner LEWIS. Yes.

Mr. MILLIGAN. Some of the members of the Supreme Court did not agree with that decision?

Commissioner LEWIS. That is true. There was difference of opinion there, but I do not care to go into that; I do not care to interpret the decision of the majority or opinions of the minority.

I will say that I voted for the O'Fallon case. I also voted to approve the so-called Howell bill that was in the Senate last year, which would bring into legislation, practically, the O'Fallon method.

The CHAIRMAN. Then, your answer is that for these underlying valuations, that the decision in the O'Fallon case is not going to affect you?

Commissioner LEWIS. Not the underlying work; it will not disturb the general work. As I understand, the decision goes to the finding of the Commission in reaching the final sum value of the O'Fallon property.

The CHAIRMAN. Well, it has been asserted that since the decision in the O'Fallon case, that your work will practically have to be done all over; is there anything in that?

Commissioner LEWIS. No; that is just a wild statement. It will not, and has not, certainly, done anything to this underlying work.

The CHAIRMAN. You made the same kind of a decision in the O'Fallon case as you have made in practically all of them; you arrived at the valuation of the O'Fallon in a similar method as you have arrived at practically all of them?

Commissioner LEWIS. No.

The CHAIRMAN. What was the difference?

Commissioner LEWIS. The O'Fallon case was a test case. The Supreme Court ruled on that. We have since tried to conform to its decision. Take the Richmond, Fredericksburg & Potomac recapture case. We departed from the O'Fallon method.

The CHAIRMAN. Well, you conformed to what the Supreme Court held in the O'Fallon case in the valuation of the Richmond, Fredericksburg & Potomac?

Commissioner LEWIS. I think so.

The CHAIRMAN. You are in court about that, are you not?

Commissioner LEWIS. We are not in court yet.

The CHAIRMAN. It is pretty reasonable to believe that you are going to be there, is it not?

Commissioner LEWIS. Why, I think that it is fair to assume that we will be, with that large amount involved. Not only is the large amount of money involved in that one case at issue but it again is a test case, and I am going to indulge in a supposition that not only the Richmond, Fredericksburg & Potomac will be interested in carrying that to the courts, but probably the carriers generally.

The CHAIRMAN. I am interested to know just what specific thing the Supreme Court finds it necessary to hold that you had not considered reproduction costs. Was it on testimony, or admission by somebody on the commission?

Commissioner LEWIS. The question on which the commission was divided is this. I am reading now from the O'Fallon case, the decision.

The CHAIRMAN. You say that the commission was divided?

Commissioner LEWIS. Yes. I am going to read from the decision of the Supreme Court in the O'Fallon case. (St. Louis & O'Fallon Railway Co. et al. v. United States et al.; United States et al. v. St. Louis & O'Fallon Railway Co. et al., 279 U. S. 461.) The Supreme Court says:

The question on which the commission divided is this: When seeking to ascertain the value of railroad property for recapture purposes, must it give consideration to current, or reproduction, costs? The weight to be accorded thereto is not the matter before us. No doubt there are some, perhaps many, railroads the ultimate value of which should be placed far below the sum necessary for reproduction. But Congress has directed that values shall be fixed upon a consideration of present costs along with all other pertinent facts: and this mandate must be obeyed.

And then the court held that we had not obeyed the mandate of Congress in the matter of consideration of the reproduction cost.

Mr. HOCH. Mr. Chairman.

The CHAIRMAN. Mr. Hoch.

Mr. HOCH. Is there anything in that decision which gives any guide to the commission as to how much weight it shall give to the cost of reproduction?

Commissioner LEWIS. Nothing, I think I can say there is not.

At all events, the O'Fallon case was decided and then we moved up to the Richmond, Fredericksburg & Potomac. There the commission does give consideration to reproduction cost. I am going to read a little from my concurring expression, which may afford some light on that:

The dissenting-in-part expressions, while valuable studies of, and possibly contributions to, the solution of the multitude of difficult problems encountered in valuation of the railroads of the United States, and also as to what the law should be, nevertheless tends to confuse the determinations reached by the majority in this case. Some of us who constitute the majority are, in St. Louis & O'Fallon Ry. Co., (124 I. C. C. 1), and also in recommendations made to our principal, the Congress, on record as favoring certain changes in the law. But

the changes have not been made, and the Supreme Court in its decision in the O'Fallon case declared that we had "failed to discharge the definite duties imposed by Congress" in not applying the law of the land concerning valuations for rate-making purposes and said "this mandate must be obeyed." It remanded us to such decisions of the courts, principal among them being *Smyth v. Ames* (169 U. S. 466). By the final interpreter of the law we are told that in administration of the recapture law we are "not to act as an arbiter in economics" but "as an agency of Congress to apply the law of the land to facts developed of record in matters permitted by Congress to have jurisdiction." The Supreme Court said that what we are required to find is value.

Well then in this concurring expression, I go on to say that I can not interpret what went through the minds of the other 10 members, but I stated what considerations went through my mind in reaching the decision I reached in the matter of the value of the Richmond, Fredericksburg & Potomac. It is set forth in that decision.

Mr. MAPES. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. As I understand your statement, Mr. Commissioner, it is that in doing this valuation work, the commission has the figures showing the original costs of the road and reproduction costs, and other elements, which go to make up the costs, and the decisions of the Supreme Court do not affect those figures, but simply are instructions to the commission as to how much weight is to be given the different elements which the commission already has in its files. You do not have to go out and get those figures anew, again, even though the Supreme Court makes these different decisions.

Commissioner LEWIS. That is practically correct, except in one thing. The Supreme Court has never told us what weight to give to any of these factors.

In *Smyth v. Ames* the court laid down a number of these factors, as being necessary to be considered, and said there might be other factors, but the courts do not tell us what weight to give these factors or elements. The courts pass on the decisions we reach, and in the O'Fallon case the Supreme Court said we had not given consideration to certain factors.

Mr. MAPES. I understand that, but even though they do lay down new rules in each individual case, you still have the figures, and do not have to go over the work of valuation again.

Commissioner LEWIS. Yes; that is right.

Mr. MILLIGAN. Did you write the majority opinion of the O'Fallon case?

Commissioner LEWIS. No; I did not. I was present and voted with the majority.

Mr. MILLIGAN. I was under the impression that you wrote the opinion.

Commissioner LEWIS. No.

The CHAIRMAN. How did the commission stand?

Commissioner LEWIS. There was a bare majority. Now, I notice the time is getting along. It is 11.15. I wanted to finish this statement. I have digressed a little way. The Supreme Court in the O'Fallon and other cases has said that what it is interested in is value.

The Supreme Court has not only declared that value is the basis of all calculations as to the reasonableness of rates, but it says it means present value. It has cited with approval *Smyth v. Ames* no less

than seventy-six times, and innumerable inferior Federal and State courts have been disposed closely to follow it. In its decision in the O'Fallon recapture case, in which the majority of the court held that the commission had not given consideration to the present cost to reproduce, the court said:

In the exercise of its proper function this court has declared the law of the land concerning valuations for rate-making purposes. The commission disregarded the approved rule and has thereby failed to discharge the definite duty imposed by Congress. More recently, in *United Railways v. West* (280 U. S. 276), it reiterated, "it is the settled rule of this court that the rate base is present value."

The commission has indicated its approval of the new directions for rate making which are contained in section 2 of H. R. 7117, but the commission does not desire its defensive weapon against attack under the general law destroyed until it is well established that the court will sustain the new rule of rate making, nor does it desire to surrender its present knowledge of the value of the properties which it regulates and which is a working knowledge and guide for it in its various regulatory duties. Nor, in the public interest, should the valuation work, which has been done, be invalidated in any degree. Colonel Thom's proposal of repeal of the 19a would of course carry with it the provisions of 19a which make our ascertainment of final value *prima facie* evidence in all judicial proceedings in which values are used. It is unnecessary to state the advantages such a provision gives to the commission. His proposal, if adopted, would place the commission on the same footing with any common carrier in any judicial proceeding wherein value was in issue. Surely there can be no desire on the part of Congress to destroy the official character and protection of its agents.

Section 2 of H. R. 7117 would strike section 5 (6) (b), which places a value limitation on capitalization in consolidation of railroads. This would leave the matter of proper capitalization to be determined by the commission in the exercise of powers conferred in section 20a. This should be a sufficient safeguard for the public interest, but is it desirable that the commission be left without a valuation guide to, and a knowledge of, the assets—just that guidance which is afforded by our valuations and the valuation and cost data and records?

I am going to just make one illustration of that which I have in mind; a case in which a railroad is buying some stockyard railroad properties. The carrier is proposing to take it in at just about double what our valuation shows to be the real assets. Now, we want such guiding data. We do not want to deprive ourselves of that information which we have gained through valuation as to what are asset values. I could give other illustrations, but time will not permit.

Under section 15 (6) in prescribing divisions the commission is required among other things to give consideration to the amount of revenue required by the several carriers to pay "a fair return on their railway property held for and used in the service of transportation." Therefore in divisions cases valuation is a factor.

Then, we come to depreciation and retirement accounting. The information developed only through the bureau of valuations is necessary in several respects:

(a) In the writing out of the investment account amounts to cover property retired from service, the ledger cost of which is unknown, reproduction cost as of the approximate date of the installation is used.



(b) In determining annual charges to operating expenses for depreciation, appropriate reproduction costs are used where ledger cost is unknown.

(c) In estimating service lives of units of property as a base for determining depreciation charges.

(d) In determining salvage values.

In acquisition cases, the amount proposed to be paid as compared with the present value is an important factor in determining the question of public interest.

In determining the question of overcapitalization or undercapitalization, value is a practical gage. In national emergencies requiring the taking over of the roads for ownership, or by lease, or temporary operation, knowledge of the value of the property would be of inestimable benefit.

In addition to these uses under the act and under the general law, I call your attention to two or three other matters; and some of these are rather interesting.

Senator Blaine has introduced into the Congress a bill providing for the appraisal by our bureau of valuation of all sites to be purchased or condemned by the United States Government. Of course, this bill has not become a law. However, it tends to show further possible demands for authoritative valuations.

We come to what is probably the outstanding law thus far enacted by this Congress—the Reconstruction Finance Corporation act. The Interstate Commerce Commission is to pass on loans to be made to carriers by the Reconstruction Finance Corporation. Already our people are busily engaged in intensive examinations of applications filed by carriers. We find that one of the most valuable things available to us to measure the unencumbered equity in the property of a particular carrier underlying a particular issue of its bonds which are offered as security for such loans is the valuation placed upon properties by us under section 19a of the act, adjusted to reflect the additions and betterments, less retirements, to the property subsequent to the date of primary valuation. The policing of such property changes subsequent to the date of our primary valuation is a regular duty of our bureau of valuation.

I want to show you a thing that occurred yesterday. I have before me right now the first two recommendations for loans under the new Reconstruction Finance Corporation act. I will not name the carriers. I do not know whether the reports have been made public yet or not. At all events, I find this in the text of the first one of these that I pick up: "As of June 30, 1918, we made a tentative valuation of the properties then owned and used by the applicant pursuant to section 19a of the interstate commerce act. We found the value for rate-making purposes of all property owned and used by the applicant in common carrier service to be" so many millions of dollars, including working capital.

The report shows that in addition to the foregoing common carrier property, the applicant owns a substantial amount of property which we have classified as noncarrier, but which, of course, is among its assets. This valuation statement has been brought down to date by the records that are available to the commission largely through its valuation work. Those in charge of that work state that this value record is one of the most necessary things to have available in passing on the applications for loans.

In the second case which I now pick up the report states:

We found a value under section 19a of the interstate commerce act for the properties owned and used in common-carrier service by the above-named carrier and its subsidiaries beginning as of June 30, 1919. Beginning with that primary valuation net additions and betterments are added giving the best guidance available as to assets at the present time.

The CHAIRMAN. Mr. Commission, how many railroads, up to this time, have made an application for loans under the Reconstruction Finance Corporation?

Commissioner LEWIS. I can not answer that. I am not on the division that passes on these applications, but here are two that have been passed on. I can get you the information if you desire it.

The CHAIRMAN. Well, of course, it would be changing.

Commissioner LEWIS. Yes; it would be changing; but, there must be a large number of them.

The CHAIRMAN. Well, is it your understanding that all classes of railroads, class 1, as well as others, have made applications? Are the two that you are referring to class 1 roads?

Commissioner LEWIS. The first one certainly is. Yes, both of them are.

The CHAIRMAN. I see.

Commissioner LEWIS. Now, the Bureau of Finance is making this test also as a guide to the intrinsic value of corporate bonds at a time when the market value of railroad securities is unnecessarily depressed to a point where current quotations on the exchange are of little or no value.

There seems to be a broadening inclination to look to our valuation forces for men that are free from outside influences and who are equipped to handle, scientifically, valuations and kindred matters that are before the Government. This House of Congress is making a study of holding companies, and those in supervision thereof are asking for trained men from the staff of our bureau of valuations to make extensive investigations and we are trying to oblige you gentlemen by lending some of our accountants particularly trained for that kind of work.

Only yesterday the District of Columbia called for certain of our skilled men to assist in presenting to the courts certain valuation matters.

I think this now brings me down to the changes in the text of section 3 of H. R. 7117, introduced on January 6, which the commission has authorized to be laid before you with its approval. Section 3 now reads:

SEC. 3. Paragraphs (f) and (g) of section 19a of the interstate commerce act, as amended (U. S. C., title 49, sec. 19a (f), (g)), are amended to read as follows:

"(f) Upon completion of the original valuations herein provided for, the commission shall thereafter keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of all common carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories and classifications of the properties; but it shall not ascertain or report new valuations except when it has occasion to make use thereof.

"(g) To enable the commission to comply with the provisions of the preceding paragraph, every common carrier subject to the provisions of this act shall make such reports and furnish such information as the commission may require."

There is serious doubt as to whether the proposed paragraph (f) contains with desirable clarity the full authority which the commission will require for the purposes therein stated.

The paragraph is very specific as to the matters of which the commission shall keep itself informed, and these matters are further limited by the subsequent provision that they are for the purpose of enabling the commission "to revise and correct its previous inventories and classifications" only. There is some apprehension that the carriers will question the authority of the commission to call for, or assemble, information in respect to present-day construction costs such as the bureau's cost section now collects, as well as information in respect to value of land. There is also involved the question whether under its present wording the commission would be warranted in expending funds for these purposes.

While the concluding clause of the section directs the commission not to ascertain or report new valuations, except as occasion arises for their use, and perhaps by implication authorizes the ascertainment of values when occasion does arise for their use, it seems to us that it will avoid misunderstanding and possible future litigation if the commission's authority to keep itself informed of values as well as inventories is more specifically expressed. The extent to which the commission may desire to go in that direction is a matter which will be within its discretion and as determined by Congress in making appropriations therefor, but the authority to keep itself so informed, it seems to us, should be beyond doubt.

Therefore, we would suggest for your consideration two inserts and the elimination of one word so as to make the revised paragraph (f) read as follows:

(f) Upon the completion of the original valuations herein—

I will indicate these changes. I will read the full text.

The CHAIRMAN. Now, you are reading your proposed suggested amendment to section 3 in 7117?

Commissioner LEWIS. Yes; in the way it is proposed as a substitute. I offer here two small changes, and if you follow your text, you will get it much better.

Mr. SHALLENBERGER. That is H. R. 7116?

Commissioner LEWIS. H. R. 7117. If you can follow your text. [Reading:]

(f) Upon completion of the original valuations herein provided for the commission shall thereafter keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use and classification of the property of all common carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein—

Mr. BULWINKLE. Just a moment. That means reclassification of the property?

Commissioner LEWIS (reading):

Classification of the property of all common carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein—

And right there we insert these words:

And may keep itself informed of current changes in costs and values of railroad properties.

That is the end of that insert.

Mr. PARKER. Will you repeat that?

Commissioner LEWIS (reading):

And may keep itself informed of current changes in costs and values of railroad properties.

That is the insert.

Then we pick up the text, which reads:

in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories.

And then we strike out the word "and" and then pick the text up with the word "classifications."

And after "classifications" insert the words "and values."

Mr. BURTNES. And insert a comma between "inventories" and "classifications."

Commissioner LEWIS. Making it read, "inventories, classifications and values of the properties."

And then we go on with your text:

but it shall not ascertain or report new valuations except when it has occasion to make use thereof.

Mr. BURTNES. Is that last clause of any significance whatsoever, in the amendment you have now proposed?

Commissioner LEWIS. No.

Mr. BURTNES. It strikes me that there is no significance, whether the last clause is wiped out or not.

Commissioner LEWIS. No, I do not believe so. The present act requires us to ascertain and report valuations from time to time.

Mr. BURTNES. It is a limitation on what you may do.

Commissioner LEWIS. It means that we keep at all times, subject to call by the commission, the information that it would be necessary to produce for valuation purposes, as H. R. 7117 provides.

The entire text, including our proposed revision, reads as follows:

(f) Upon completion of the original valuations herein provided for the commission shall thereafter keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of all common carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of railroad properties in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories, classifications and values of the properties; but it shall not ascertain or report new valuations except when it has occasion to make use thereof.

Mr. HOCH. Mr. Chairman.

The CHAIRMAN. Mr. Hoch.

Mr. HOCH. Mr. Chairman, it is not clear to me, the exact meaning of the word "cost," as used in the first amendment you have proposed.

Now, in paragraph (f) as I understand it, as it is proposed to be modified, it is provided that the commission shall keep itself informed as to new construction, extensions, improvements, retirements, and other changes in the condition, property, use, and classification, and so forth, and of the costs of all additions and betterments.

Now, you want to provide that the commission may keep itself informed of current changes in costs and values of railroad properties.

I understand how there can be current changes in value of property, but I do not understand how there can be current changes in "costs," in this connection. What is it that you mean to say when you say that you will "keep informed of current changes in costs"?

Commissioner LEWIS. It means this: One of the most effective activities we have is the "cost branch." That branch is vigorously and continually at work keeping a record of the changing costs that are prevailing in construction costs for railroad property of all kinds and standing ready to apply them to inventories of different dates. What we specifically want here—one of the things, at all events—is that authority which will permit us to continue that cost work, so that at all times we will have knowledge available as to current costs and unit prices.

Mr. HOCH. You mean market prices?

Commissioner LEWIS. Market prices—what they are paying for materials, labor and other items and elements in construction—that permits us to follow the trend of construction costs.

Mr. HOCH. I do not understand the word "cost" is synonymous with the word "price" because there can not be any cost until something is actually bought. Then, there would be cost.

As long as they are not bought, there would not be any cost about it.

Now, if you mean that the commission shall keep informed of current changes in market price, that is clear. But I do not see why if railroads make certain additions and betterments and you keep yourselves informed of the costs—that is what the railroads pay for those additions and betterments, why you have not done all that is necessary so far as the costs to the railroads are concerned.

It seems to me that what you mean is market price, not cost.

Commissioner LEWIS. Does it not go a little bit further than that? When we are dealing with the railroads, we are not only dealing with the price that is paid for units, but we are also dealing with getting them into place. It seems to me that it does, to that extent, describe what we are asking for. For example—

Mr. HOCH. I am merely suggesting, some change in those words that will make clear that you mean the difference in the market price, including whatever cost there would be to the railroads in case they did purchase and install these additions.

Commissioner LEWIS. That will be all right, and I am very glad that you called attention to it.

Mr. BURTNES. Mr. Hoch, will you permit an interjection?

Mr. HOCH. Yes, sir.

Mr. BURTNES. After all, "costs" as used in this sentence, comes down to a mere element in one of the factors in the value, does it not?

Commissioner LEWIS. That is correct.

Mr. BURTNES. And does not the word "value" as used in your proposed amendment substantially include what you have in mind in the use of the word "costs." Is not the word "costs" as used one of the elements of value?

Commissioner LEWIS. You are entirely right.

Mr. BURTNES. Then, is not it entirely redundant?

Commissioner LEWIS. It may be, but at all events, I am giving an inside picture of this thing we are considering. We want authority to continue what we call our cost branch work. We may have the wrong word. In any event, that is what we are talking about.

Our time is getting pretty short. I want to check up to see if I have covered the points that I desired to cover.

I have not had time to read the record of this hearing but I understand, that the principal objection to continuing valuation is the expense. The major part of that expense, such as the expense going into the field and inventorying the properties and making the first reports on the properties, is passed.

Mr. BULWINKLE. Mr. Commissioner, I can not hear you on account of that machine across the street making that noise.

Commissioner LEWIS. We have already got the records, and we have checked these properties up to 1928, and for some roads we have got it up to the end of 1931, and when we get it current, why, a great deal of the expense is over, both for the Government and the carriers.

There is always going to be expense, but these carriers have got to have most of this information for their corporate records, and to enable them to make reports not only to the Interstate Commerce Commission, but also to all the regulatory bodies.

The necessity for valuations is to enable us to know, as I have pointed out, the real assets of the carriers. One commissioner made a rather striking remark, that some roads are yet groaning under the printing presses of their early stock and bond promoters. We want to know assets—not book entries. We want to know what is being employed in public service. The carriers have greatly clarified their financial set-ups in the last few years.

I remarked earlier that this work began long before my time on the commission; that even the carriers did not have much of an idea of what their property consisted, and what they really had. The Government has given them an inventory of their property and the Government has also brought into existence a system of record keeping. The carriers can not all agree on whether they are going to stand by investment. Someone is likely to break through at any time with litigation. The carriers are not proposing to disband their valuation on legal staffs or to discontinue keeping valuations. We want to maintain a valuation organization to meet any issue that may arise. That is, we want not only a technical staff, but also a trained legal staff, not necessarily large.

Our records are better than anyone has, I do not care who it is. This is the largest undertaking of valuation the world has ever known. I mean scientific valuation. While it may be somewhat egotistical for the commission to say so, I think that we probably know more about the property of the railroads than some of the carriers know themselves.

Now, having given the railroads an inventory, why should the Government junk its informative organization? The commission thinks that it should not.

There is one more comment I want to make. I understand Mr. Thom stated that the movement for the valuation of railroads arose largely through efforts of Senator La Follette and others who believed as he did that this valuation would disclose inflated values and "watered" stock in the railroad corporations which would result in lower freight rates for the public. The only thing that has resulted, has been really to the public benefit.

Mr. SHALLENBERGER. I would like to ask you if you think that the expenditure has been warranted, in so far as the public is concerned?

Commissioner LEWIS. Yes. So far as the commission is concerned, it entered into valuation without any preconceived idea as to what



would be shown by such a scientific assay of the railroads of this country. It is true that the more popular aspects of the demand for valuation were on the part of those who felt that there was a large overcapitalization.

The valuation of the properties, the first valuations put on the properties, by the Interstate Commerce Commission was in 1920 and was \$18,900,000,000 for the properties as a whole. That valuation was not anything as complete as what we have now.

Mr. SHALLENBERGER. Has the valuation—

Commissioner LEWIS. There has been added to the properties of this country, in the last 10 years, between six and seven billion dollars of new capital. That was expended, I think, rather in conformity to the public demand.

Mr. SHALLENBERGER. Does that mean that the commission has decided that they are worth that much more than they were in 1920?

Commissioner LEWIS. No; not necessarily, Mr. Shallenberger. There are many factors that might enter into that. There are the retirement of property, depreciation of property and various other factors. There might be a decrease in the reproduction cost factor in a time of falling reproduction costs. If, as the carriers insist in the courts, the reproduction factors should be the determining factor in the ascertainment of value, that should mean lower values. The reproduction cost factor applies to all of the common carrier property; it is not limited to the property added at high costs.

Mr. SHALLENBERGER. If these appraisals have any value, you will have to stand by what you have got, will you not?

Commissioner LEWIS. It is the authoritative value of the agency of the Government. I imagine that it will have more weight than anything else. The law recognizes it as prima facie evidence.

Mr. LONERGAN. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Mr. Lonergan.

Mr. LONERGAN. Has the valuation work disclosed any "watered securities" of the railroad companies, and if so, to what extent?

Commissioner LEWIS. Well, taken as a whole, it has not, Mr. Lonergan. There are many individual roads that are shown as being overcapitalized. On the other hand, the valuation has shown that as to some roads, quite the contrary condition existed. Take the Pennsylvania. Our valuation shows that its assets are greater than the book value of the corporation. In the case of those roads which were overcapitalized, the valuation has afforded the commission, and the carriers themselves, opportunity to work toward a better and sounder financial structure.

Mr. LONERGAN. Can you give any information about the New York, New Haven & Hartford Railroad?

Commissioner LEWIS. I can not, off hand. In what respect?

Mr. LONERGAN. Just a general question, because years ago the New York, New Haven & Hartford was loaded with water.

Commissioner LEWIS. Yes.

The most interesting fact in connection with the New York, New Haven & Hartford, is that the Court of Appeals of the District of Columbia, however, has handed down a decision against us in which the court accorded to the New York, New Haven & Hartford values for terminal property which we can not find; which terminals are owned entirely by the New York Central and leased to the New

York, New Haven & Hartford. If that decision should be sustained by the Supreme Court, it will mean a duplication in value of certain properties which are used jointly.

Mr. LONERGAN. To the credit of the New York, New Haven & Hartford it has made a wonderful recovery in recent years. This is due to its efficient management.

Commissioner LEWIS. Yes. I recall that in about 1922 or 1923 there was great apprehension that the New York, New Haven & Hartford was going into the hands of receivers. That would have shocked badly the savings banks in New England, and they were considerably concerned at that time. There was maturing at that time the French bond issue, as I recall it, of some \$27,000,000. It was taken care of, and the New York, New Haven & Hartford paddled out of very shallow water. It is in much better condition.

The CHAIRMAN. Mr. Commissioner, we are very much obliged to you for your informative statement, and this winds up the hearings on Section 15a.

Commissioner LEWIS. May I say to you, Mr. Lonergan, I will send you the 19a primary valuation of the New Haven if you would like to have it.

Mr. LONERGAN. I would be glad to have it.

Mr. BURTNES. May I put a short question?

The CHAIRMAN. Yes.

Mr. BURTNES. I understand that the commission is unanimous in reference to approving section 2, of this bill, which provides for repeal of subdivision (b) of paragraph 6 of section 5.

Commissioner LEWIS. Yes. We do not have any objection for the reason that we think that is covered under 20a. We have in our hands any limitation of capital issues. But to guide us in the exercise of that power it is highly desirable in passing on capitalization and capital issues that we know something about the assets.

Mr. BURTNES. Certainly, the actual value.

Commissioner LEWIS. Yes.

The CHAIRMAN. Thank you, Mr. Lewis.

Commissioner LEWIS. Thank you, Mr. Chairman.

(Thereupon, at 11.48 o'clock a. m., the hearings were concluded and the committee adjourned.)

CLEVELAND, OHIO, February 11, 1932.

Hon. SAM RAYBURN,  
Chairman House Committee on Interstate and Foreign Commerce,  
Washington, D. C.

MY DEAR MR. RAYBURN: I was in Washington a few days ago when evidence was being taken before your committee upon the bill proposing the repeal of section 15a of the interstate commerce act, summoned to Washington as representing some of the short-line railroads. I am president of two short-line railroads. I was unable to remain over to give my views to the committee. I am taking the liberty of saying in this letter substantially what I intended to say to the committee.

On the question of the repeal of the recapture provision of section 15a there seems to be no controversy. No one, apparently, favors its continuance. The sole question seems to relate to the advisability of making this repeal retroactive to the effective date in 1920, involving as it would the repayment to certain railroads of the money already collected with accrued interest, amounting to some \$10,000,000 to \$12,000,000, and the discontinuance of all further proceedings against other railroads to collect the amounts alleged to have accrued since 1920.

In the Wall Street Journal of February 10, 1931, there is given what purports to be data transmitted by Commissioner Eastman to the House committee for its information in consideration of this subject, wherein is given a list of Class I railroads in the recapture class, with the amounts claimed from each, from which it appears that the estimated recapture liability in the period 1920 to 1930, inclusive, of all the roads in the United States amounts to a little over \$362,000,000. This list of railroads is interesting. As a class the railroads of the United States are in such financial distress that they have been designated by Congress as special beneficiaries of loans to be made by the Reconstruction Finance Corporation. Many of the lines listed in the above report, as subject to liability under the recapture provision for large sums, are well known to be in distress.

I notice that the Nickel Plate Railroad is listed as liable to nearly \$9,000,000. Its securities are selling at merely nominal prices. Its 6 per cent debenture notes maturing October 1, 1932 (only about eight months away) are selling at about 45, and yet this railroad is claimed to have been so prosperous that it owes nearly \$9,000,000.

The securities of the New York Central Railroad are selling at less than one-third normal prices. Its outstanding 6 per cent debentures, which mature in 1935 (only three years away), are currently selling at about 86.

The Wabash Railroad, which has been so prosperous that it owes the Government, according to the list, nearly \$2,500,000, passed into a receivership some months ago.

The Frisco Railroad, listed as owing the Government over \$19,000,000, is in such condition financially that it is unable to pay its taxes, and recently secured from the State of Missouri a moratorium on taxes.

Need I say more on the advisability of collecting or attempting to collect these claims?

Personally, I do not believe that a fraction of the amounts listed as recapture liabilities are liabilities or ever can be recovered. The unfortunate part is the enormous expense the Government has been and will be put to, and the enormous expense that the railroads have been and will be put to if this section 15a is not repealed in toto.

In explanation of my observation on this subject of recovery, I have to say it has been assumed that the recovery to be made from the railroads is that fixed by the statute, to wit, one-half of all excess above 6 per cent. This is wrong. The 6 per cent mentioned must, when added to the one-half of the excess retained by the railroads, give a reasonable rate of return on the value of the property.

Chief Justice Taft, in *Dayton Goose Creek case* (263 U. S. 456), in holding the recapture provision of the transportation act constitutional was careful to point out (pp. 485-487) that a carrier was entitled to retain out of its earnings a reasonable return on the value of the property devoted to transportation purposes, and that in the case before him it was stipulated that the amount left with the railroad after the Government's recapture was above 8 per cent. The amount of liability, therefore, can in no case be measured by taking arbitrarily one-half of the excess above 6 per cent. It may well be that the entire excess above 6 per cent in individual cases is necessary to make the reasonable rate of return which the railroad is constitutionally entitled to have. The "value of the property" as well as the rate of return which a carrier is entitled to is a judicial question. (*Monongahela Navigation Co. v. U. S.*, 148 U. S. 327; *U. S. v. New River Collieries Co.*, 262 U. S. 341.)

In the last case Mr. Justice Butler said (pp. 343, 344):

"The ascertainment of compensation is a judicial function and no power exists in any department of the Government to declare what the compensation shall be or to prescribe any binding rule in that regard."

While, therefore, the Interstate Commerce Commission, as a mere agency of Congress, will undoubtedly follow the language of the transportation act and claim as a liability one-half of the excess above 6 per cent, the real excess will have to be determined by the courts, and may in a proper case require the entire excess to be added to the 6 per cent in order to give to the railroad company before the court a fair and reasonable return.

When it comes to "recapture" of earnings lawfully collected, each railroad stands by itself. No uniform rule may be adopted.

"Nor can a rule be laid down which will apply uniformly to all sorts of utilities. What may be a fair return for one may be inadequate for another, depending upon circumstances, locality and risk. \* \* \*

"In the light of recent decisions of this court and other Federal courts, it is not certain that rates securing a return of 7½ per cent or even 8 per cent on the

value of the property would not be necessary to avoid confiscation. (*Sutherland, J.*, 280 U. S. 234, 249, 252.)

It is therefore, very uncertain how much of the alleged liability of the various railroads listed can be recovered, as each case will depend upon its own facts.

The provision of section 15a making the recapture liability dependent upon the results of each year standing by itself, raises an important constitutional question. The commission has repeatedly called attention to its unfairness and has suggested an average of earnings over a period of years. The constitutional question I refer to is whether or not this provision constitutes due process of law under the Fifth Amendment of the Constitution of the United States. This question was not considered nor decided in the *Dayton Goose Creek case*, as it was stipulated in that case that the carrier earned in excess of 8 per cent each year. There are cases now before the Commission where railroads in one or two years out of the 10-year period (1920-1930) made substantial earnings above 6 per cent, but large deficits in the other recapture years, and where if the average of earnings over the 10-year period is considered, the carrier would have earned practically nothing. These cases will in good form raise this constitutional question.

The most important question from a practical standpoint is, however, the cost of collecting or attempting to collect this alleged liability. The writer happens to represent a small one-track railroad 10½ miles long. Its equipment consists of 2 locomotives and 1 caboose and 2 section cars, and it does its entire business, generally, with 1 train crew. A simpler railroad could hardly be conceived. Eight miles of this railroad were built in 1902 and about 2½ miles in 1912. Down to 1922, a period of 20 years, it never made a dollar; in fact, the stockholders owning the railroad throughout this period were compelled annually to advance considerable sums to keep it in operation. The actual deficit was probably two-thirds of the original cost of the railroad. In 1922 a change was made in the situation of this property. New industries were brought to the line and old industries enlarged. The business of the line increased from 3,500 loads per year to over 20,000 loads per year. In 1928 the commission began an examination of this property to determine whether there was not something recapturable under the transportation act. They have completed their report, using in their investigation on the ground 696 man days, at a cost estimated at not less than \$10,000 to \$12,000. The railroad also used 257 man days at a cost of \$2,056. In other words, the Government itself has expended over \$1,000 a mile to value this small railroad. There are over 250,000 miles of railroad in the United States. At \$1,000 a mile, the cost of valuing these railroads for purposes of recapture would amount to \$250,000,000. When, however, the size and the complexity of these other railroads are taken into account, as compared with the simplicity of this little railroad that I refer to, it is not improbable that the valuation cost will be from three to four times per mile of road over the valuation cost of this little railroad. In other words, the Government will likely pay out from \$750,000,000 to \$1,000,000,000 before it gets through with this recapture program. All of this enormous sum of money will be raised by general taxation.

Very truly yours,

A. C. DULIN.

MISSISSIPPI VALLEY ASSOCIATION,  
St. Louis, February 5, 1932.

HON. SAM RAYBURN,  
Chairman Interstate and Foreign Commerce Committee,  
House Office Building, Washington, D. C.

DEAR MR. RAYBURN: At a meeting of the Mississippi Valley Association held in St. Louis November 23-24 last, which was attended by more than 600 delegates from 25 States and 101 cities in the Mississippi Basin, the following resolution was unanimously adopted:

#### RECAPTURE CLAUSE

"We view with disfavor the imposition upon any form of transportation, including railroads, of unnecessary restrictions and regulations which impede the maintenance of efficient and economically functioning plants and organizations, able to render the maximum of cost-saving service to industry.

"The Mississippi Valley Association suggests to the Congress a reviewing of the transportation act 'recapture requirements'; and likewise that the Congress

consider a requirement that the railroads pay their outstanding obligations when able so to do, instead of merely issuing refunding bonds."

The Mississippi Valley Association is vitally concerned in the maintenance of adequate rail transportation. We are anxious that the rail lines be preserved as a major transportation agency. We want to see them strengthened and their efficiency increased. We strongly believe that there is ample room for both rail and water transportation and that one is complementary to the other. The water routes have always been business builders for the rail lines.

The major problem of the Mississippi Valley is distribution. The major part of our industry and agriculture is located 900 miles or more from the seaboard which we must reach at rates that will permit us to compete in the markets of the world if we are to prosper and develop as our great natural advantages and natural resources warrant.

The Mississippi Valley is primarily interested in a transportation service that coordinates rail, water, and highway and effects such economies as will break down our present trade restrictions and give us an opportunity to extend the boundaries of our commerce in fair competition with other sections of the country and with our foreign competitors.

We appreciate very much the splendid interest and support the Interstate and Foreign Commerce Committee has given to the development of our water lines through the passage of the Denison bill, and we sincerely hope that your present study of the rail situation will convince you that the repeal of the "recapture clause" is in the interest, not only of the rail lines, but of the shippers of the country who, in the last analysis, furnish the tonnage and pay the freight bills.

Very truly yours,

ROBERT ISHAM RANDOLPH, *President.*

x

## APPENDIX

INTERSTATE COMMERCE COMMISSION,  
Washington, February 24, 1932.

HON. SAM RAYBURN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives.*

MY DEAR MR. CHAIRMAN: At the hearings on the bills to amend section 15a (H. R. 7116 and H. R. 7117), I stated that I would ask our staff to prepare a statement showing the estimated recapture liability of the various railroads for each of the years 1920 to 1930, inclusive, and a further statement showing for each railroad subject to recapture in one or more of the years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year, and the net recapturable liability computed over the full period of 11 years, after allowing for both the excesses and the deficiencies. Herewith I am sending you 25 copies of each of these statements for submission to the members of the committee. I shall be glad if you will let me know whether I can make them public in case we have requests for copies down here.

You will understand that these statements, like the others of similar character which I have furnished to the committee, are based on mere estimates and in many cases on rather rough estimates. It should also be noted that if the year 1931 should be included in the period the total recapturable amount would be still further reduced materially, and that if the year 1932 should be included it seems probable, on the basis of present railroad earnings, that a still larger reduction would be made.

Along with the statements I am sending you a copy of a memorandum in regard to them which was given to me by our chief valuation examiner, Mr. Pattison.

Respectfully yours,

JOSEPH B. EASTMAN, *Commissioner.*

BUREAU OF VALUATION,  
February 16, 1932.

Memorandum to Commissioner Eastman:

As requested by you, I have had prepared and am submitting herewith copies of two statements relative to the recapture liability of railroads to supplement those heretofore presented to the House Committee on Interstate and Foreign Commerce for use in the consideration of the proposed modifications of section 15a. These statements are:

1. Statement of estimated recapture liability of railroads for each of the years 1920 to 1930, inclusive, grouped by classes.
2. Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years.

From the summary attached to statement 2 it appears that if recapture were to be computed over the 11 years instead of on an annual basis the amount would be reduced from about \$360,000,000 to about \$237,000,000 or 34 per cent and the number of roads subject to recapture would be reduced from 448 to 163. One-half of the Class I roads subject to recapture in one or more of the years would be found free from recapture liability on the 11-year basis and considerably more than one-half of the small roads, those in Classes II, III, and IV, would be eliminated.

Statement 2 is prepared in sufficient detail to permit of an estimate of recapture liability based on any desired period of years from 1 to 11.

Twenty-five copies of these statements are being sent to you for submission to the committee.

M. A. PATTISON,  
*Chief Valuation Examiner.*



Statement of estimated recapture liability of railroads for each of the years 1920 to 1930, inclusive, grouped by classes

CLASS I (Annual operating revenues above \$1,000,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Total
1. Chesapeake & Ohio.....	\$22,828			\$1,293,931	\$1,932,676	\$5,497,896	\$8,599,135	\$7,831,728	\$7,491,851	\$7,934,382	\$7,248,474	\$47,779,611
2. Norfolk & Western.....	2,737,551	\$609,620	\$1,879,798	4,182,032	1,201,200	5,156,060	2,402,093	1,567,380	1,524,863	4,893,465	4,893,465	22,106,462
3. St. Louis-San Francisco.....	1,169,411	1,402,918	591,684	1,709,738	1,981,153	2,620,173	2,534,778	1,694,830	2,604,317	4,052,662	1,618,922	19,556,512
4. Southern Railway.....				1,018,917	2,823,847	3,416,194	3,445,156	2,474,727	2,156,086	1,306,139		15,888,881
5. Reading Company.....	672,348	288,570	1,182,797	2,078,645	1,344,247	2,034,082	2,574,896	1,232,285				13,746,555
6. Bessemer & Lake Erie.....	728,143		1,830,868	2,078,645	70,760	1,165,104	1,244,601	385,871	1,104,909	2,211,032	833,713	11,370,624
7. Atchafalaya, Topeka & Santa Fe.....												11,015,315
8. Hannibal & St. Louis.....												9,724,411
9. El Paso & North Pacific.....	334,904	565,339	1,283,920	1,579,434	1,258,028	3,504,659	1,624,713	719,033	404,759	598,824		9,372,265
10. Union Pacific.....	2,007,562	1,068,056	1,513,859	513,859	1,172,971	1,542,403	1,166,409	906,160	524,070	779,047		8,817,555
11. New York, Chicago & St. Louis.....				863,426	1,234,446	1,543,932	1,090,000	557,161	1,438,833	2,057,679	436,437	8,363,047
12. Missouri-Kansas-Texas.....				325,864	247,228	339,429	1,800,799	1,012,422	1,406,534	1,595,081	548,730	7,586,920
13. Virginian.....	680,736	113,822	365,710	183,237	303,038	281,178	600,159	1,014,182	1,564,619	1,564,619	5,174	4,231,114
14. Rockingham Valley.....	148,467				344,752	534,579	1,773,172	489,161	348,251	130,057		4,863,693
15. Terminal Ave. of St. Louis.....	181,213	638,709	783,692	4,842,577	105,327	4,740	45,107		3,268,966	716,591		4,842,577
16. New York Central.....					61,087	1,042,527	379,295		1,294,996	601,270		4,183,231
17. Texas & Pacific.....									537,721	1,294,996		3,909,062
18. Detroit, Toledo & Ironton.....									503,823	604,434		3,814,226
19. Union (Penn.).....	253,334	472,974	48,824	27,347	115,327	402,316	641,614	495,209	64,071	216,982		2,270,908
20. Chicago & North Western.....	43,338	173,889	430,067	636,070	549,029	424,349	588,047	514,884	178,010	109,163		2,094,974
21. Wheeling & Lake Erie.....												1,906,710
22. Baltimore & Ohio.....												1,955,924
23. Richmond, Fredericksburg & Potomac.....												1,771,370
24. Delaware & Hudson.....	200,968	391,963	500,034	500,034	480,237	778,787	425,320		183,244	322,046		1,728,456
25. Belt Ry. Co. of Chicago.....	215,685	253,613	153,068	153,068	50,988	1,204,875	883,131		45,127	272,698		1,955,924
26. Gulf Coast Lines.....	148,468	274,473	196,460	196,460	308,596	118,144	286,324	270,927	270,927	216,982		2,270,908
27. New York, New Haven & Hartford.....	256,823	125,742	292,130	292,130	81,742	306,501	490,131	330,504	178,010	109,163		2,094,974
28. St. Louis Southwestern.....												1,906,710
29. Kalamazoo Valley.....	454,783	380,310	234,152	612,003	89,638	77,468	108,920					1,955,924
30. Toledo Terminal.....	15,267				18,203	359,966	382,271	397,515	276,278	322,046		1,771,370
31. Duluth & Iron Range.....	135,401	101,822	231,265	200,335	177,125	275,487	89,204	610,859	1,071,374	134,734		1,728,456
32. Illinois Terminal.....	1,183,138	43,972	122,593	203,762	187,038	268,585	120,283	136,227	194,632	257,233		1,070,203
33. Lehigh & New England.....	102,599	60,415		200,825	110,464	49,580	374,125	283,066				1,549,865
34. Midland Valley.....	121,985		77,093	92,399	107,532	217,232		196,255	122,857	108,085		1,425,271
									272,111	372,862		1,361,293

41. Denver & Rio Grande Western.....	751,613				300,142	168,638	286,303	346,626	342,824			1,263,075
42. Florida East Coast.....	200,045					624,034	490,272			66,022		1,213,479
43. Delaware, Lackawanna & Western.....	101,791	90,674	130,736	170,528	222,664	267,205	1,183,785	32,770	40,236			1,201,765
44. Chicago & Illinois Midland.....	134,173	79,095	293,782	61,268	75,947	24,259	106,581	189,701	84,419	271,132	283,146	1,148,707
45. Bangor & Aroostook.....												1,107,024
46. Seaboard Air Line.....	38,584											1
47. Nevada Northern.....												1,064,453
48. Brooklyn Eastern District Terminal.....	108,182	19,550	143,807	20,897	271,608	90,390	104,662	78,739	78,087	210,440	235,206	944,670
49. Great Northern & Independence.....												944,670
50. Peoria & Pekin Union.....												844,524
51. Clinchfield.....	28,119											844,524
52. Pittsburgh & West Virginia.....												782,720
53. Chicago, Indianapolis & Louisville.....												708,848
54. Akron, Canton & Youngstown.....												708,848
55. Lehigh & Hudson River.....												708,848
56. Louisiana & Arkansas.....												708,848
57. Southern Pacific Co.....	15,128											708,848
58. Western Ry. of Alabama.....	246,870											708,848
59. Louisville, Henderson & St. Louis.....	9,135											708,848
60. Detroit Terminal.....	402,839											708,848
61. New Orleans, Great Northern.....												708,848
62. Alton & Southern.....												708,848
63. Utah.....	104,242											708,848
64. Mississippi Central.....												708,848
65. Texas & New Orleans Connecting.....												708,848
66. Chicago & Alton.....												708,848
67. Louisville & Nashville.....	1,139,661											708,848
68. International Great Northern.....												708,848
69. Alabama & Vicksburg.....												708,848
70. Chattanooga & Black Lick.....												708,848
71. Buffalo & Susquehanna.....												708,848
72. Newburgh & South Shore.....												708,848
73. El Paso & Southwestern.....												708,848
74. Lake Terminal.....												708,848
75. Chicago, Terre Haute & Southeastern.....												708,848
76. Atchafalaya.....												708,848
77. Atchafalaya.....												708,848
78. Missouri Illinois.....												708,848
79. Bay Terminal.....												708,848

Includes with Missouri Pacific subsequent to 1924.

Includes with New York &amp; Pennsylvania July 1, 1923, and subsequent years.

Leased to Southern Pacific Nov. 1, 1924.

Leased to Chicago, Milwaukee &amp; St. Paul July 1, 1921.

Included with Wabash subsequent to 1925.

Statement of estimated recapture liability of railroads for each of the years 1920 to 1930, inclusive, grouped by classes—Continued

CLASS I—Continued (Annual operating revenues above \$1,000,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Total
87. Georgia R. R. ....												\$31,060
88. Kansas, Oklahoma & Gulf.....			\$12,873									12,873
89. Charleston & Western Carolina.....												7,331
90. Green Bay & Western.....						\$7,331				\$8,510		6,510
Total, Class I.....	\$14,098,214	\$7,270,332	14,484,260	\$34,259,228	\$22,198,081	47,002,826	61,810,227	\$20,959,318	\$35,473,468	51,890,606	\$17,350,198	336,443,378
CLASS II (Annual operating revenues from \$100,000 to \$1,000,000)												
1. Cambria & Indiana.....	184,100	94,093	100,833	93,348	40,089	137,354	187,201	100,006	113,923	371,337	960,630	1,890,914
2. Genesee & Wyoming.....	184,171	77,775	105,380	90,766	40,766	117,845	88,119	60,150	61,343	40,301	28,629	887,884
3. Litchfield & Madison.....	68,912	72,792	57,452	115,769	39,320	24,610	26,423	52,280	130,566	157,457	66,137	817,232
4. Louisiana & Northwest.....	52,201	87,791	201,669	78,179	39,320	34,741	94,978	41,755	98,992	83,546	6,271	811,546
5. Interstate.....	94,811	50,858	87,347	77,722	55,766	22,639	38,874	45,715	3,455	53,762		453,900
6. Dayton-Chicago Creek.....	23,377	33,610	55,973	64,069	46,183	117,766	27,794					427,417
7. St. Louis & O'Fallon.....	55,376	65,102	55,376	55,376	34,728	23,733	55,729					379,822
8. Port Huron & Detroit.....			9,862		11,211	49,831	23,459		1,814			206,487
9. Tampa & Gulf Coast.....					7,380	49,831	136,601		52,047			206,487
10. Durham & Southern.....					17,160	6,729	17,148		12,814			280,678
11. Charlotte & Southern.....					105,744	43,748	1,717	5,280	17,148			280,210
12. Columbia Southern.....					13,627	42,556	9,773	19,066	11,809			280,210
13. Charleston Southern.....					105,744	43,748	1,717	5,280	17,148			280,210
14. Charleston Southern.....					13,627	42,556	9,773	19,066	11,809			280,210
15. Alton & Eastern (began operations Mar. 1, 1925).....					30,082	93,710	117,906					280,210
16. Sierra Ry. of California.....					16,862		362	71,567	98,196	66,776		236,901
17. Brimstone R. & Canal.....					44,546		33,546					221,675
18. Montana, Snyder & Pacific.....					27,769		28,878					217,783
19. Montana, Snyder & Pacific.....					27,769		28,878					217,783
20. Sugar Land & Southern.....					12,613		14,610					209,794
21. Abilene & Southern.....					56,514		2,622					204,088
22. Trenton & Gulf.....					31,195		17,095					186,211
23. Yosemite Valley.....					30,681		49,040					178,567
24. T. & O. Valley.....					1,729		45,577					178,567
25. T. & O. Valley.....					54,294		11,927					178,567
26. T. & O. Valley.....					1,061		22,133					178,567
27. Paducah & Illinois.....					27,642		8,819					169,083
28. Sandy Valley & Elkhorn.....					25,639		94,069					169,083

CLASS I—Continued (Annual operating revenues above \$1,000,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Total
29. Louisiana & Pacific.....	48,471	31,258	19,745	36,011	9,425	9,425	9,425	9,425	9,425	9,425	9,425	145,864
30. Albany, Tennessee & Northern.....	16,132	10,320	25,935	25,935	25,935	25,935	25,935	25,935	25,935	25,935	25,935	132,649
31. Albany, Tennessee & Northern.....	16,132	10,320	25,935	25,935	25,935	25,935	25,935	25,935	25,935	25,935	25,935	132,649
32. Peard River & Gulf.....	28,338	10,677	15,667	14,110	11,205	11,205	11,205	11,205	11,205	11,205	11,205	126,760
33. Peard River & Gulf.....	28,338	10,677	15,667	14,110	11,205	11,205	11,205	11,205	11,205	11,205	11,205	126,760
34. Red River & Gulf.....	37,606	21,529	18,598	24,223	14,068	14,068	14,068	14,068	14,068	14,068	14,068	126,760
35. McCord River & Wheeling.....												126,760
36. Morgan & Western.....												126,760
37. Minnesota, Dakota & Western.....												126,760
38. Live Oak, Perry & Gulf.....												126,760
39. Minneapolis, Northfield & Southern.....												126,760
40. Minneapolis, Northfield & Southern.....												126,760
41. Ashley, Drew & Northern.....												126,760
42. Birmingham & Southeastern.....												126,760
43. Lake Erie, Franklin & Clarion.....												126,760
44. Jackson & Erie & Bath.....												126,760
45. Ligonier Valley.....												126,760
46. West Virginia Northern.....												126,760
47. Gulf & Sabine River.....												126,760
48. Midland Terminal.....												126,760
49. W. Gulf & Southern.....												126,760
50. W. Gulf & Southern.....												126,760
51. Columbia, Newberry & Laurens.....												126,760
52. Jonesboro, Lake City & Eastern.....												126,760
53. Wildwood & Delaware Bay Short.....												126,760
54. Line.....												126,760
55. Ray & Gulf.....												126,760
56. Ray & Gulf.....												126,760
57. Tionesta Valley.....												126,760
58. Georgia Northern.....												126,760
59. Wharton & Northern.....												126,760
60. Sewell Valley.....												126,760
61. Arkansas Valley.....												126,760
62. Arkansas Valley.....												126,760
63. Oklahoma City-Ada-Atoka.....												126,760
64. Oklahoma City-Ada-Atoka.....												126,760
65. Birmingham & Northwestern.....												126,760
66. Trona.....												126,760
67. Bartlett River.....												126,760
68. Central & Southern.....												126,760
69. Central & Southern.....												126,760
70. Chatahoochee Valley.....												126,760
71. Onalanda & Western.....												126,760

1. Sold to Santa Fe in October, 1926.

2. Acquired by Southern Pacific May 1, 1926.

3. Leased to Southern Pacific in December, 1926.

4. Leased to Monongahela Jan. 1, 1927.

5. Included with Missouri Pacific subsequent to 1926.

6. Included with N. O. P. & M.

7. With B. & O. to June 30, 1925; acquired by C. & O. July 1, 1925.

8. Abandoned Nov. 30, 1926.

9. Included with Monongahela subsequent to July 6, 1923.

10. To Gulf, Mobile & Northern Gulf.

11. Included with Monongahela Jan. 1, 1927.

12. Acquired by St. Louis-San Francisco Nov. 1, 1925.

13. With M. K. T. to May 1, 1924.

Statement of estimated recapture liability of railroads for each of the years 1920 to 1930, inclusive, grouped by classes—Continued

CLASS II—Continued	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Total
(Annual operating revenues from \$100,000 to \$1,000,000)												
72. Louisiana Southern <sup>11</sup>		\$1,736	\$5,757	\$411	\$7,717	\$31,063		\$5,889	\$1,525		\$280	\$31,063
73. St. Louis & Ohio River <sup>12</sup>		9,954	3,334			6,843				\$3,012	15,008	29,848
74. Pittsburgh, Lisbon & Western							\$4,401					28,710
75. Mississippi River & Bonne Terre												28,058
76. St. Louis & Valley Belt												27,872
77. Chicago & Western												27,316
78. Chicago & North Western												26,890
79. Morris and Erie												26,890
80. Franklin & Abbeville <sup>13</sup>												26,890
81. Tennessee & North Carolina												26,890
82. Campbell Creek												26,890
83. Coal Valley												26,890
84. Greenville & Ashdown <sup>14</sup>												26,890
85. Fernwood Columbia & Gulf												26,890
86. Butler County <sup>15</sup>												26,890
87. Cumberland & Manchester <sup>16</sup>												26,890
88. Batesville Southwestern												26,890
89. Beana and Lake Superior												26,890
90. Minnesota & Western												26,890
91. Minnesota & St. Lawrence												26,890
92. Marquette, Tomahawk & Western												26,890
93. East Jordan & Southern												26,890
94. Big Sandy & Kentucky River												26,890
95. Lakeside & Marblehead												26,890
96. Big Point, Thomasville & Denton <sup>17</sup>												26,890
97. Big Point, Thomasville & Denton <sup>18</sup>												26,890
98. Blytheville, Leadville & Arkansas Southern												26,890
99. Canton & Carthage												26,890
100. San Joaquin & Eastern												26,890
101. Cumberland & Pennsylvania												26,890
102. Cumberland & Pennsylvania												26,890
103. Norwood & St. Lawrence												26,890
104. Norwood & St. Lawrence												26,890
105. Utah												26,890
106. Colorado & Wyoming												26,890
107. Potato Creek <sup>19</sup>												26,890
108. Powitz, Cheballe & Cascade												26,890
109. East Tennessee & Western North												26,890
110. Macon, Dublin & Savannah												26,890
111. Tennessee												26,890

CLASS III	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Total
(Annual operating revenues below \$100,000)												
112. Longview, Portland & Northern <sup>20</sup>												8,056
113. Prescott & Southern												7,421
114. Arizona & New Mexico <sup>21</sup>												6,498
115. Meridian & Memphis <sup>22</sup>												6,387
116. Aberdeen & Rockfish												6,387
117. Sumpter Valley												6,387
118. Kanawha, Glen Jean & Eastern												6,387
119. Indiana & Western												6,387
120. Connersport & Port Allegany												6,387
121. Detroit, Caro & Sandusky <sup>23</sup>												6,387
122. Tampa & Jacksonville <sup>24</sup>												6,387
123. Upper Merion & Plymouth												6,387
124. Northwestern R. R. of South Caro-												6,387
125. Lake Champlain & Moriah												6,387
126. Minnesota, Dakota & Western												6,387
127. Virginia & Carolina Southern												6,387
128. Maryland & Delaware Coast												6,387
129. Colorado & Southern												6,387
130. Colorado & Southern												6,387
131. Missouri Southern												6,387
132. Kentucky & Tennessee												6,387
133. Tuckerton												6,387
134. Carolina & Northeastern												6,387
135. Minneapolis, Red Lake & Manitoba												6,387
136. South Georgia												6,387
137. Total	1,161,630	1,045,466	1,947,029	1,830,348	1,130,803	1,779,553	1,702,978	965,235	874,948	1,261,794	694,335	14,423,119

1. El Dorado & Wesson	26,776	40,428	33,878	40,277	58,241	24,925	1,317	17,802	2,346	16,992	260,982
2. Unity Railways	1,256		6,583	9,747	43,914	37,715		35,150	35,338	28,579	268,282
3. De Kalb & Western	8,751	11,374	14,469	16,275	31,277	21,880		21,098	18,611	15,661	182,145
4. Toledo, Argosy & Western	4,070	6,467	1,704	22,520	12,536	22,487		15,294	32,195	16,463	121,884
5. Kalamazoo & Southern	12,172	8,197	13,130	17,400	15,139	32,325		10,374	4,868	7,165	105,467
6. Appalachian	8,989			12,053	6,154	2,267		22,675	27,774	23,268	84,206
7. Fairport, Palmetto & Eastern											79,975
8. Kelley's Creek & Northwestern											
9. Erie & Michigan Ry. & Navigation Co.											

<sup>11</sup> Leased until Jan. 31, 1923.  
<sup>12</sup> Commenced operations, Apr. 19, 1921.  
<sup>13</sup> Subsequent to 1924 included with M. L. & T.  
<sup>14</sup> Operated by M. L. & T.  
<sup>15</sup> To St. Louis-San Francisco, Sept. 1, 1927.  
<sup>16</sup> Commenced operation April 1, 1925.  
<sup>17</sup> Leased to Louisville & Nashville, January, 1927.  
<sup>18</sup> N. W. & N. W. Dec. 31, 1922.  
<sup>19</sup> Began operations Apr. 27, 1925.  
<sup>20</sup> To Seaboard July 1, 1927.  
<sup>21</sup> Commenced operation Aug. 11, 1925.  
<sup>22</sup> Leased to El Paso, Jan. 1, 1922.  
<sup>23</sup> Leased Jan. 1, 1923, to Gulf, Mobile & Northern.  
<sup>24</sup> Began operations Apr. 27, 1925.



Statement of estimated recapture liability of railroads for each of the years 1920 to 1930, inclusive, grouped by classes—Continued

CLASS III—Continued (Annual operating revenues below \$100,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Total
10. Indian Creek Valley <sup>a</sup>		\$8,621	\$19,035		\$10,205	\$13,300	\$10,360					\$72,611
11. Rockcastle River	\$2,651		14,344	\$14,649	8,198	12,672	5,773		\$8,441	\$6,485		67,440
12. Newkum Valley	3,241	19,424	7,227	20,738	7,054	7,539	15,745		5,170	6,875	\$4,240	68,992
13. Silverton Northern					1,407	23,092	12,715	\$10,006				67,130
14. Carlton & Coast <sup>a</sup>					1,174	4,348	0,908		4,080	6,208	3,877	55,861
15. Great Haven & Bructon <sup>a</sup>	1,004	10,144	16,049	18,059	2,897	10,184	11,270	6,024	1,984	6,095		40,076
16. Tuskegee		2,756	3,968	4,280	1,317	15,114	11,667		1,199			39,853
17. Mount Hood		3,372	7,921	1,317	10,528	2,774			2,420	1,224	3,478	34,223
18. Cement, Tolman & Tidewater <sup>a</sup>	4,143		8,567		6,539				15,938			31,445
19. San Luis Central									1,301	141		25,939
20. Fort Townsend & Puget Sound	10,057	11,761	6,854	4,813		2,718	497		1,929	1,146		25,024
21. Lewis & Clark & Southern	342	10,286	5,487	2,739		3,903	3,710		6,597	1,230	3,583	22,377
22. Mansfield & Empire Traction	2,760	1,914	1,089	2,906	4,659							22,287
23. Augusta Northern												21,995
24. Carbon County (put in operation July 8, 1923)												21,769
25. Kays Creek, Blountstown												20,043
26. Neama, Gerson & Searns <sup>a</sup>		3,288	15,279		7,334	6,267	5,484		2,916	403		19,597
27. Bennettville & Cheraw		2,163	2,822	3,539	4,717	5,216		6,778	1,979	136		17,837
28. Birmingham, Selma & Mobile				5,737	1,481	2,468			1,305	4,107	79	17,121
29. Mount Hope Mineral		3,436	13,045	6,805		997	2,125					16,634
30. Monoke Ry <sup>a</sup>		5,646	1,539	6,805		1,514	3,011					16,402
31. Alabama & Ouachita Valley			882	3,301	6,217	5,537	3,611					15,845
32. Alabama & Northwestern		1,403	2,855	3,740	6,217	1,909						15,468
33. Sandersville			1,253						11,251		955	14,941
34. Kansas & Sidiell		11,022	450	4,490			2,546		380			14,841
35. Sligo & Eastern <sup>a</sup>	3,919											14,414
36. Santa Maria Valley	6,969											14,216
37. Santa Maria Valley	7,340											14,124
38. Glenmont & Western <sup>a</sup>	1,338	6,260	707		5,730	1,370	3,902	8,924	4,206			13,189
39. Ware Shoals							2,925	6,058				11,244
40. Kanawha Central												10,817
41. Eureka-Nevada					6,822	949						10,724
42. May Point & Clayton	2,523			8,721								10,249
43. Glenmont & Eastern				10,724								10,086
44. Pickens												
45. Almador Central												

50. Reynoldsville & Falls Creek	9,788											9,788
51. Atlantic & Carolina		413	1,727	2,473	296	4,895	468			1,248		9,070
52. Danville			5,080		296	963	5,146			2,156		8,442
53. Washington & Mount Morris				98	629	4,065	2,802	141		2,535		7,237
54. Washington & Lincolnton							2,807					6,439
55. Salem, Winona & Southern							5,768					6,856
56. Pecon Valley Southern		4,114	2,742			2,325	772	212		840	1,380	6,221
57. Christie & Eastern				437								5,160
58. Newcomer, Umlia & Ruston <sup>a</sup>		1,356	15									5,029
59. Shreveport, Houston & Gulf		2,529	2,631		189							5,003
60. Nacogdoches & Southeastern		3,049	212									4,874
61. Boniphan, Kensett & Searcy		2,031										4,859
62. Puget Sound & Cascade						212	1,547					4,721
63. Bath & Hennepin	4,874						4,721					4,593
64. Superior & Southeastern												4,527
65. Beaver, Meade & Englewood												4,185
66. Manitowish & Repton												4,177
67. Denison, Bonham & New Orleans <sup>a</sup>												4,156
68. Missouri & Louisiana												4,065
69. Central Ry. of Arkansas												3,996
70. Tennessee, Kentucky & Northern												3,827
71. Cape Fear Ry. (Inc.)												3,800
72. Washington Run												3,223
73. Shelbyville & Beaver River		884	1,757									3,027
74. Fordyce & Princeton												3,000
75. Louisville, New Albany & Corydon		3,306										3,000
76. Gladys & Alpena <sup>a</sup>		3,223										3,163
77. Buffalo Union Central												3,027
78. Buffalo Union Central												3,027
79. Louisville, Sligo & Eastern												2,830
80. Alcolu												2,830
81. West Pittston-Exeter												2,700
82. Goshen Valley <sup>a</sup>		439										2,468
83. Oil Fields Short Line <sup>a</sup>												2,434
84. Tennessee Valley												2,416
85. Rockport, Langdon & Northern												2,394
86. Oregon, Pacific & Eastern												2,394
87. Montana												1,963
88. Carolina Western <sup>a</sup>												

\* Sold to St. Louis-San Francisco July 1, 1927.

\* Abandoned August 10, 1922.

\* To D. &amp; R. G. June 1, 1927.

\* Abandoned 1924.

\* Commenced operation Apr. 3, 1924.

\* Abandoned in 1929.

\* Operations began in May, 1924.

\* Abandoned December, 1925.

\* Operations began 1921.

\* Ceased operations Nov. 30, 1928.

\* Began operations Sept. 1, 1922.

\* Leased to Baltimore &amp; Ohio, Jan. 1, 1927.

\* Not operated, 1920-1923.

\* Operated by G. B. &amp; O. subsequent to 1926.

\* Abandoned 1921.

\* Abandoned in 1926.

\* Abandoned in 1927.

## RAILROAD LEGISLATION

Statement of estimated recapture liability of railroads for each of the years 1920 to 1930, inclusive, grouped by classes—Continued

	CLASS III—Continued (Annual operating revenues below \$100,000)											Total
	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	
96. Montana Western.....	\$1,750							\$1,004				\$1,750
97. Dover & South Bound.....		\$491		\$104				1,549				1,669
98. Smoky Mountain ".....		762										1,494
99. Gulf & Northern.....		732										1,441
100. Pittsboro & Northeastern.....												1,404
101. Fitchburg & Northwestern.....												1,343
102. Grass Valley.....							\$635		\$8	\$471	\$327	1,259
103. Grass Valley & River.....										1,404		1,404
104. Cadiz.....		\$1,343										1,343
105. Black Mountain.....		86	1,173									1,259
106. Mississippi Export.....				1,090								1,090
107. Monson.....				66								66
108. Alabama Central.....						\$603		940		1,048		1,944
109. Georgia, Ashburn, Sylvester & Can- illa ".....					\$928							928
110. Murfreesboro, Nashville & S. W.....									921			921
111. Thornton & Alexandria.....							919					919
112. Kingston Carolina.....		91										91
113. Kline & Elk.....			874									874
114. Rural Valley ".....		219	135	35	119	351						829
115. Craig Mountain.....												785
116. Graham County ".....												785
117. Bellefonte Central.....												742
118. Flint River & Northeastern.....												742
119. Washington, Brandywine & Point Lookout.....								727		688		688
120. Carolina Southern ".....	672											672
121. Bonham & Hattiesburg Southern.....									639			639
122. Ferdinand.....										605		605
123. Marcellus & Otisco Co.....			547									547
124. Ainder & Northwestern.....			505						526			526
125. Rowlesburg & Southern.....	232											232
126. Rowlesburg & Northern.....					122	75						197
127. Flemingsburg & Northern.....												429
128. Quincy.....							418					418
129. Talbotton.....							384					384
130. Little River.....			324	77			295					375
131. Clifton & North Island.....								375				375
132. Milltown Air Line ".....	263				274							537

## RAILROAD LEGISLATION

	CLASS IV											Total
	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	
133. Peoria, Hannu City & Western ".....												158
134. Union Point & White Plains ".....												60
Total.....	100,153	197,740	229,957	233,702	218,000	367,277	337,843	209,372	290,208	243,167	161,527	2,550,056
(Switching and terminal companies, ex- cluding those shown under Class I)												
1. Chicago & Western Indiana.....	31,832	180,462	186,288	185,075	66,019	127,997	16,735					794,498
2. Ironcon ".....	34,695	85,471	122,014	186,876	156,732	102,775	22,555					692,483
3. St. Paul Union Depot.....	81,011	72,078	50,948	62,109	53,314	43,254	10,183					388,311
4. Chicago & Illinois Western.....							107,832					386,746
5. Port Worth Belt.....	718	33,698	41,027	42,518	44,499	37,151	22,399		99,631	35,353	20,747	304,451
6. Fort Worth Belt.....	23,402	24,708	25,352	21,833	18,257	16,403	15,877		27,075	18,648	6,908	207,382
7. Texas City Terminal.....	246	43,457	57,074	27,991	127	33,048	18,589		34,857	29,851	32,747	246,389
8. Chicago Short Line.....							47,252		17,444	11,027	10,020	246,389
9. Birmingham Southern.....	21,412						33,386		32,769	15,665	13,692	236,077
10. Chicago Heights.....							33,386		25,701	33,074	10,663	236,077
11. Arkansas & Memphis Branch & Illinois Northern.....	21,310	26,857	25,353	23,106	21,656	16,704	19,932		17,132	13,900	11,890	217,062
12. Chicago, West Pullman & Southern.....	14,956		1,214	8,032	24,063	38,785	37,418		54,338	46,742	3,631	206,345
13. Canton.....				24,381	3,832	26,096	21,992		36,992	38,441	23,923	166,180
14. Philadelphia, Bethlehem & North- eastern.....												151,374
15. Rock Island, Piquette Terminal.....	13,682	13,833	12,159	12,117	11,713	11,489	11,176		9,401	64,825	8,984	117,191
16. Rock Island, Piquette Terminal.....	13,655	8,951	105,682	73,147	14,422	(*)	(*)		5,842	9,027	(*)	116,882
17. Coal & Iron.....												185,704
18. South Buffalo.....												94,805
19. Cuyahoga Valley.....												90,116
20. La Salle & Bureau County.....												86,522
21. Missouri & Illinois Bridge & Belt.....	14,202	3,744	11,060	16,397	23,634	9,702	7,731		20,782	10,911	15,789	85,673
22. St. Paul Bridge & Terminal.....	11,253	24,281	24,649	13,699	5,401	4,765	5,028		2,946	8,124	7,228	81,611
23. Union Station & Terminal (Omaha).....							27,741			(*)	(*)	70,042
24. Union Station & Terminal (Omaha).....							27,741			(*)	(*)	70,042
25. Union Terminal (Dallas) & Depot.....	13,176	13,336	12,641	20,475	4,772	7,401	18,506		1,299	31,615	4,409	64,806
26. Ogden Union Railway & Depot.....												57,614
27. Alton & Southern.....												56,947
28. Kansas City Terminal.....												54,111
29. Sioux City Terminal.....												53,515
30. River Terminal (St. Joe).....												43,132
31. St. Joseph Belt.....												40,107
32. East St. Louis Junction.....												
33. Dayton Union.....	544	10,343	18,506	7,403	9,658	6,714	3,272		5,437	4,815	6,048	
34. Dayton Union.....		4,259	5,019	4,011	570	2,974	3,970					

\* No returns filed prior to 1923.  
 \* Discontinued operation Dec. 31, 1927.  
 \* Leased Sept. 13, 1923, 50 per cent to Lehigh Valley and Reading.  
 \* Union Station & Terminal (Omaha) & Union Station & Terminal (Omaha).  
 \* With South Omaha Terminal, 1923.

Statement of estimated recapture liability of railroads for each of the years 1920 to 1930, inclusive, grouped by classes—Continued

CLASS IV—Continued. (Switching and terminal companies, ex- cluding those shown under Class I)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Total
35. Norfolk & Portsmouth Belt Line.....	\$319	\$11,551	\$25,164						\$14,245	\$16,151		\$37,034
36. Hoboken Manufacturers.....	26,095	4,067	14,565	\$11,500	\$832	\$2,399						30,196
37. Hannibal Connecting.....	28,505					6,435						20,455
38. Hannibal Connecting.....	7,643					2,119						28,505
39. Des Moines Union.....	3,152					7,722						20,905
40. Des Moines Union.....	2,862					3,756						25,883
41. Uniontown & Northern.....		3,520	3,846									27,414
42. Uniontown & Northern.....		5,877	19,001									27,414
43. East Jersey Railroad & Terminal.....		22,837										22,837
44. Youngstown & Northern.....			12,815									22,837
45. Youngstown & Northern.....												22,837
46. Youngstown & Northern.....												22,837
47. Youngstown & Northern.....												22,837
48. Youngstown & Northern.....												22,837
49. Youngstown & Northern.....												22,837
50. Youngstown & Northern.....												22,837
51. Youngstown & Northern.....												22,837
52. Youngstown & Northern.....												22,837
53. Youngstown & Northern.....												22,837
54. Youngstown & Northern.....												22,837
55. Youngstown & Northern.....												22,837
56. Youngstown & Northern.....												22,837
57. Youngstown & Northern.....												22,837
58. Youngstown & Northern.....												22,837
59. Youngstown & Northern.....												22,837
60. Youngstown & Northern.....												22,837
61. Youngstown & Northern.....												22,837
62. Youngstown & Northern.....												22,837
63. Youngstown & Northern.....												22,837
64. Youngstown & Northern.....												22,837
65. Youngstown & Northern.....												22,837
66. Youngstown & Northern.....												22,837
67. Youngstown & Northern.....												22,837
68. Youngstown & Northern.....												22,837
69. Youngstown & Northern.....												22,837
70. Youngstown & Northern.....												22,837
71. Youngstown & Northern.....												22,837
72. Youngstown & Northern.....												22,837
73. Youngstown & Northern.....												22,837
74. Youngstown & Northern.....												22,837
75. Youngstown & Northern.....												22,837
76. Youngstown & Northern.....												22,837
77. Youngstown & Northern.....												22,837
78. Youngstown & Northern.....												22,837
79. Youngstown & Northern.....												22,837
80. Youngstown & Northern.....												22,837
81. Youngstown & Northern.....												22,837
82. Youngstown & Northern.....												22,837
83. Youngstown & Northern.....												22,837
84. Youngstown & Northern.....												22,837
Total.....	1,324											1,970

73. Chicago & Calumet River.....												1,921
74. Chicago & Calumet River.....												1,856
75. Chicago & Calumet River.....												1,088
76. Chicago & Calumet River.....												1,440
77. Chicago & Calumet River.....												1,319
78. Chicago & Calumet River.....												1,278
79. Chicago & Calumet River.....												545
80. Chicago & Calumet River.....												322
81. Chicago & Calumet River.....												200
82. Chicago & Calumet River.....												91
83. Chicago & Calumet River.....												60
84. Chicago & Calumet River.....												6,833,159
Total.....	372,425	597,886	1,050,605	957,841	607,889	790,200	547,327	470,134	633,525	579,942	225,385	

<sup>a</sup> Commenced operation, Sept. 1, 1925.

<sup>b</sup> Successor to Union Stock Yards Co. of Omaha, effective June 1, 1927.

<sup>c</sup> Started operation June 21, 1927.



Total estimated recapture liability of railroads by classes computed over the full period of 11 years

	Number of carriers	Estimated liability	Per cent
Class I.....	45	\$222,120,453	93.52
Class II.....	54	9,637,154	4.06
Class III.....	35	1,501,644	.63
Class IV.....	29	4,262,175	1.79
Total.....	163	237,521,426	100.00

Comparison between estimated recapture liability of railroads computed on an annual basis and computed over the full period of 11 years

	Annual basis			11-year basis			Per cent reduction	
	Number	Estimated liability	Per cent	Number	Estimated liability	Per cent	Number	Estimated liability
Class I.....	90	\$334,135,359	92.96	45	\$222,120,453	93.52	50	33.52
Class II.....	137	15,929,742	4.43	54	9,637,154	4.06	61	39.50
Class III.....	137	2,560,381	.71	35	1,501,644	.63	74	41.35
Class IV.....	84	8,833,659	1.90	29	4,262,175	1.79	65	37.63
	448	359,459,141	100.00	163	237,521,426	100.00	64	33.92

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years

CLASS I CARRIERS (Annual operating revenues above \$1,000,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated recapture liability over 11-year period
1. Chesapeake & Ohio.....	\$22,528	—	—	—	—	—	—	—	—	—	—	\$7,248,474
2. Norfolk & Western.....	70,639	—	—	—	—	—	—	—	—	—	—	4,930,051
3. Norfolk & Western Northern.....	2,737,631	—	—	—	—	—	—	—	—	—	—	1,613,922
4. St. Louis-San Francisco.....	169,411	—	—	—	—	—	—	—	—	—	—	1,722,635
5. Southern Ry.....	—	—	—	—	—	—	—	—	—	—	—	1,338,139
6. Reading Co.....	—	—	—	—	—	—	—	—	—	—	—	8,967,621
7. Bessemer & Lake Erie.....	903,684	—	—	—	—	—	—	—	—	—	—	1,374,239
8. Atchafalaya, Topinka & Santa Fe.....	728,143	—	—	—	—	—	—	—	—	—	—	1,374,239
9. Atchafalaya, Topinka & Santa Fe.....	728,143	—	—	—	—	—	—	—	—	—	—	1,374,239
10. Atchafalaya, Topinka & Santa Fe.....	728,143	—	—	—	—	—	—	—	—	—	—	1,374,239
11. New York, Chicago & St. Louis.....	324,694	—	—	—	—	—	—	—	—	—	—	1,374,239
12. New York, Chicago & St. Louis.....	324,694	—	—	—	—	—	—	—	—	—	—	1,374,239
13. Missouri-Kansas-Texas.....	371,741	—	—	—	—	—	—	—	—	—	—	1,374,239
14. Virginian.....	390,739	—	—	—	—	—	—	—	—	—	—	1,374,239
15. Hocking Valley.....	148,468	—	—	—	—	—	—	—	—	—	—	1,374,239
16. Pere Marquette.....	148,468	—	—	—	—	—	—	—	—	—	—	1,374,239
17. Erie.....	148,468	—	—	—	—	—	—	—	—	—	—	1,374,239
18. New York Central.....	181,213	—	—	—	—	—	—	—	—	—	—	1,374,239
19. Texas & Pacific.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
20. Detroit, Toledo & Ironmont.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
21. Union (Pennsylvania).....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
22. Kansas City Southern.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
23. Kansas City Southern.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
24. Wisconsin Central & Indiana, etc.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
25. Baltimore & Ohio.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
26. Richmond, Fredericksburg & Potomac.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
27. Delaware & Hudson.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
28. Wabash.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
29. Belt Ry. Co. of Chicago.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
30. Illinois & Michigan Shore Line.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239
31. Gulf Coast Lines.....	—	—	—	—	—	—	—	—	—	—	—	1,374,239

<sup>1</sup> New York Central system.

<sup>2</sup> Missouri Pacific system.

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued

CLASS I CARRIERS—Continued (Annual operating revenues above \$1,000,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated recapture liability over 11-year period
32. New York, New Haven & Hartford	\$4,744,777	-\$12,640,098	-\$7,096,119	-\$6,425,545	-\$3,390,637	-\$1,997,145	-\$2,025,489	-\$1,926,683	-\$383,806	\$1,966,710	-\$2,523,910	None.
33. St. Louis Southwestern	454,783	390,310	234,152	612,003	18,203	37,896	100,920	288,096	324,766	657,414	1,268,338	None.
34. Longbeach	15,297	-91,687	-73,569	-98,303	18,203	37,896	100,920	288,096	324,766	657,414	1,268,338	None.
35. Kansas City, Mexico & Orient	192,896	-778,378	-633,935	-401,724	327,555	-371,115	81,304	397,515	276,278	322,046	(*)	1,470,372
36. Toledo Terminal	1,182,491	101,892	291,205	200,335	327,125	275,437	141,389	136,257	19,194	74,734	(*)	1,722,722
37. Duluth & Iron Range	1,182,491	101,892	291,205	200,335	327,125	275,437	141,389	136,257	19,194	74,734	(*)	1,722,722
38. Illinois Terminal	102,699	68,671	122,263	105,762	157,038	268,896	278,642	335,666	674,021	483,160	580,443	273,101
39. Lehigh & New England	121,965	-31,193	77,063	102,306	105,762	157,038	268,896	278,642	335,666	674,021	483,160	580,443
40. Midland Valley	102,699	68,671	122,263	105,762	157,038	268,896	278,642	335,666	674,021	483,160	580,443	273,101
41. Denver & Rio Grande Western	751,613	-1,426,205	-252,644	-1,649,004	1,944,375	163,638	288,303	282,348	272,111	372,802	58,069	1,313,014
42. Elgin, Joliet & Eastern	305,804	-924,427	-287,898	-1,649,004	1,944,375	163,638	288,303	282,348	272,111	372,802	58,069	1,313,014
43. Western Maryland	260,945	-924,427	-287,898	-1,649,004	1,944,375	163,638	288,303	282,348	272,111	372,802	58,069	1,313,014
44. Delaware, Maryland & West Virginia	458,906	-924,427	-287,898	-1,649,004	1,944,375	163,638	288,303	282,348	272,111	372,802	58,069	1,313,014
45. Chicago & Illinois Midland	101,701	90,674	150,792	173,295	17,215	771,738	1,183,788	124,692	322,158	272,960	373,882	None.
46. Colorado, St. Louis & Western	134,172	70,065	262,782	630,975	75,947	24,360	31,345	475,404	475,404	40,230	35,300	668,304
47. Seaboard & Atlantic	-55,810	-246,818	-1,286,008	61,268	75,947	24,360	31,345	475,404	475,404	40,230	35,300	668,304
48. Montour	-239,460	-7,778	10,735	271,008	90,360	75,947	24,360	31,345	475,404	475,404	40,230	668,304
49. Nevada Northern	-32,467	-163,865	7,883	137,968	97,933	75,947	24,360	31,345	475,404	475,404	40,230	668,304
50. Nevada Northern District Terminal	-6,222	19,559	143,807	95,673	63,323	104,531	96,931	62,402	183,653	91,170	80,900	858,308
51. Lake Superior & Ishpeming	-108,182	-280,245	-13,722	20,857	130,448	38,539	33,326	53,326	103,635	330,365	-24,645	367,154
52. Peoria & Rock Island	-2,123,214	-7,283,901	-5,033,673	-1,939,274	-2,274,442	-788,500	381,833	38,539	53,326	103,635	330,365	-24,645
53. Peoria & Rock Island	-2,123,214	-7,283,901	-5,033,673	-1,939,274	-2,274,442	-788,500	381,833	38,539	53,326	103,635	330,365	-24,645
54. Clinchfield & West Virginia	-64,253	-25,989	117,552	94,541	35,133	70,012	65,434	169,462	55,434	431,728	161,103	None.
55. Clinchfield & West Virginia	-64,253	-25,989	117,552	94,541	35,133	70,012	65,434	169,462	55,434	431,728	161,103	None.
56. Pittsburgh & West Virginia	-124,844	-1,268,730	-465,564	-268,302	-171,960	62,373	353,346	32,768	120,549	146,582	-214,203	None.
57. Chicago, Indianapolis & Louisville	-272,427	-466,205	-196,214	40,987	-110,881	145,555	216,894	112,597	82,692	20,435	-712,552	None.
58. Alton, Canton & Youngstown	-235,103	-89,572	47,010	54,891	61,554	97,733	132,658	64,533	96,681	116,659	-8,042	166,790
59. Guilford & Hudson River	-89,673	-339,258	-40,705	104,720	153,431	172,045	172,045	91,494	89,707	63,172	-341,932	None.
60. Lehigh & Hudson River	15,126	-112,425	80,746	147,416	15,871	108,831	44,303	-102,403	89,707	63,172	-341,932	None.
61. Louisiana & Arkansas												306,965

62. Southern Pacific Co.	246,870	-5,200,521	-3,522,986	205,219	-4,424,480	-5,589,557	-4,038,377	-6,060,829	-5,425,032	-5,337,689	-14,210,000	55,712
63. Louisville, Henderson & St. Louis	46,598	-62,990	55,402	37,092	85,836	155,199	37,222	99,073	36,966	-86,911	146,497	189,456
64. Louisville, Henderson & St. Louis	46,598	-62,990	55,402	37,092	85,836	155,199	37,222	99,073	36,966	-86,911	146,497	189,456
65. Buffalo, Rochester & Pittsburgh	402,839	-40,213	53,035	111,091	66,610	128,837	465,435	42,763	-778,108	-717,784	-174,724	None.
66. Detroit Terminal	-60,663	-226,196	79,338	111,091	66,610	128,837	465,435	42,763	-778,108	-717,784	-174,724	None.
67. New Orleans Great Northern	-65,520	-2,105	24,344	34,970	34,970	34,970	34,970	34,970	34,970	34,970	34,970	200,334
68. Alton & Southern	-37,856	-218,898	-70,953	-34,970	34,970	34,970	34,970	34,970	34,970	34,970	34,970	None.
69. Missouri Central	-37,856	-218,898	-70,953	-34,970	34,970	34,970	34,970	34,970	34,970	34,970	34,970	None.
70. Memphis Connecting	-37,856	-218,898	-70,953	-34,970	34,970	34,970	34,970	34,970	34,970	34,970	34,970	None.
71. Chicago & Alton	-15,075	-206,877	-116,563	-87,383	-180,011	-39,455	61,552	-11,911	15,875	22,742	15,440	None.
72. Chicago & Alton	-15,075	-206,877	-116,563	-87,383	-180,011	-39,455	61,552	-11,911	15,875	22,742	15,440	None.
73. Louisville & Nashville	-15,075	-206,877	-116,563	-87,383	-180,011	-39,455	61,552	-11,911	15,875	22,742	15,440	None.
74. Louisville & Nashville	-15,075	-206,877	-116,563	-87,383	-180,011	-39,455	61,552	-11,911	15,875	22,742	15,440	None.
75. International Great Northern	-184,661	-941,523	-216,591	74,574	97,120	12,785	272,063	-2,206,322	-4,198,686	-4,198,686	-4,198,686	None.
76. Cincinnati & Black Lake	-184,661	-941,523	-216,591	74,574	97,120	12,785	272,063	-2,206,322	-4,198,686	-4,198,686	-4,198,686	None.
77. Pittsburgh & Shawmut	74,510	-202,959	-312,856	-192,361	-220,513	-151,837	-66,006	-76,066	-27,211	97,333	-10,360	None.
78. Buffalo & Susquehanna (B. & O.)	66,891	-255,767	-165,241	-28,713	-175,134	-151,837	-66,006	-76,066	-27,211	97,333	-10,360	None.
79. Newburgh & South Shore	-207,538	-34,766	-20,922	-94,863	-42,969	6,376	-7,780	-55,570	40,566	14,160	-83,997	None.
80. El Paso & Southwestern	61,097	-891,381	-144,148	-409,177	-354,017	-354,017	-354,017	-354,017	-354,017	-354,017	-354,017	None.
81. Lake Terminal	167,477	6,152	9,136	-78,351	-77,949	-138,539	-30,570	-80,862	-149,413	43,212	-68,983	None.
82. Alton, Canton & Youngstown	53,252	-173,211	-198,994	-205,053	-76,685	-16,014	-437	-2,822	6,589	40,119	-19,813	None.
83. Missouri Pacific	-15,131	-15,770	6,364	7,108	-203,854	-123,649	31,040	-138,763	-216,306	-206,368	-311,977	None.
84. Bay Terminal	-150,464	-402,208	-177,961	-8,100	-203,854	-123,649	31,040	-138,763	-216,306	-206,368	-311,977	None.
85. Georgia R. R.	-177,028	-233,508	12,573	-136,336	-24,905	-7,333	-71,773	-126,701	-106,979	-132,675	-235,481	None.
86. Kansas, Oklahoma & Gulf	-28,377	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	None.
87. Charleston & Western Carolina	53,378	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	None.
88. Dayton-Goose Creek	53,378	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	None.
89. St. Louis & O'Fallon	53,378	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	None.
90. Port Huron & Detroit	53,378	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	None.

Total recapturable

Number of carriers, Class I.

CLASS II CARRIERS

(Annual operating revenues from \$100,000 to \$1,000,000)

1. Cambria & Indiana	184,100	94,093	109,833	93,348	49,089	137,354	187,201	160,006	113,929	371,337	360,630	1,850,914
2. Genesee & Wyoming	98,914	77,775	134,172	105,860	99,073	117,655	61,439	61,439	4,343	40,392	26,829	837,855
3. Litchfield & Madison	102,699	68,671	122,263	105,762	157,038	268,896	278,642	335,666	674,021	483,160	580,443	816,067
4. Litchfield & Madison	102,699	68,671	122,263	105,762	157,038	268,896	278,642	335,666	674,021	483,160	580,443	816,067
5. Interstate	52,201	-29,284	90,989	78,179	-4,845	34,741	38,874	45,714	89,992	83,762	6,271	642,314
6. Oklahoma, New Mexico & Pac.	94,811	60,838	87,346	77,722	55,766	22,039	94,918	45,714	89,992	83,762	6,271	396,249
7. Dayton-Goose Creek	29,377	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	427,416
8. St. Louis & O'Fallon	53,378	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	274,382
9. Port Huron & Detroit	53,378	38,610	55,973	64,099	46,183	117,766	27,794	-12,670	31,814	-62,077	-42,851	274,382

Missouri Pacific system.

Santa Fe system.

Operated by New York Central & St. Louis.

L. & N. 1930.

B. & O., 1930.

Illinois Central system.

Began operations March 23, 1925.

Southern Pacific system.

Acquired by C. & St. P.

Acquired by Wabash 1926.

Not operated in 1920.

Midland Valley.

Sold to Atchison.

Acquired by Santa Fe in 1927.

Leased by D. B. C. & M.

## RAILROAD LEGISLATION

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued

CLASS II CARRIERS—Continued (Annual operating revenues from \$100,000 to \$1,000,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated recapture liability over 11- year period
10. Tampa & Gulf Coast 11	-\$15,895	-\$57,260	-\$75,657	-\$26,554	\$70,061	\$86,754	\$136,681	\$58,650	\$52,047	\$85,524	\$86,199	\$124,110
11. Durham & Southern	32,322	13,627	105,744	43,748	1,717	7,470	38,044	21,700	2,684	48,671	4,806	283,497
12. Okmulgee Northern	71,928	2,501	35,504	68,384	12,389	9,774	19,066	9,834	11,509	40,367	4,806	237,906
13. Cornwall	42,042	32,402	118,746	67,734	16,962	95,710	117,906	71,567	98,196	64,776	181,968	234,768
14. Chartiers Southern 12	14,482	30,438	42,850	48,466	44,387	38,482	44,513	58,650	43,349	25,990	84,234	36,514
15. Alton & Eastern 11	13,357	11,769	6,488	12,813	27,769	24,610	26,878	18,157	21,256	18,576	620	204,706
16. Roscoe Snyder & Pacific	9,389	14,311	28,597	12,013	24,722	14,600	12,023	17,125	21,256	32,725	21,415	204,065
17. Montana, Wyoming & Southern	35,101	8,464	28,170	56,514	2,623	70,398	10,398	17,125	21,256	32,725	21,415	204,065
18. Abilene & Southern (with Texas & Pacific from 1928)	7,383	17,579	10,119	31,196	17,036	37,189	49,040	41,631	32,471	11,926	161,269	161,269
19. Yosemite Valley	46,040	27,362	30,681	1,711	11,927	32,488	48,577	23,151	20,607	10,926	55,492	55,492
20. St. Louis, Troy & Western 11	77,006	13,483	7,168	10,855	9,858	104,401	85,776	22,832	201,007	106,380	21,918	106,380
21. Tucson, Cornelia & Gila Bend	25,014	33,436	1,061	50,804	27,586	18,345	22,051	1,180	5,845	17,197	25,408	100,239
22. San Antonio Southern 11	12,683	43,650	27,642	28,009	28,089	8,819	22,133	16,646	34,796	57,218	48,761	143,978
23. Paducah & Illinois	30,018	29,039	53,634	44,850	12,611	35,591	7,415	16,646	34,796	57,218	48,761	143,978
24. Louisiana Valley & Elkhorn 11	11,468	48,471	31,258	58,876	12,611	94,609	7,415	16,646	34,796	57,218	48,761	143,978
25. Louisiana & Pacific 11	11,468	48,471	31,258	58,876	12,611	94,609	7,415	16,646	34,796	57,218	48,761	143,978
26. Pittsburgh, Chartiers & Youghi- e 11	4,006	43,575	10,122	49,320	25,935	15,201	8,930	20,927	34,400	28,306	24,245	24,245
27. Alabama, Tennessee & Northern	12,677	33,089	22,161	18,318	21,468	25,528	28,701	18,917	84,515	32,374	14,144	24,245
28. Great Western	20,290	28,338	22,024	33,362	3,905	37,919	29,239	28,470	14,566	5,655	15,687	20,290
29. Red River Valley	20,804	37,066	21,526	19,887	11,697	15,539	11,310	23,470	23,265	26,247	15,687	20,804
30. Red River & Gulf	18,815	37,066	21,526	19,887	11,697	15,539	11,310	23,470	23,265	26,247	15,687	20,804
31. McCloud River	10,595	20,446	21,526	19,887	11,697	15,539	11,310	23,470	23,265	26,247	15,687	20,804
32. West Virginia & Northern	26,777	27,347	23,624	16,692	16,981	1,541	38,186	9,139	4,702	51,438	297,524	None.
33. Minnesota, Dakota & Western	23,327	119,267	13,717	46,909	33,300	14,267	17,173	30,487	17,066	8,999	34,638	None.
34. Minnesota & Western	3,420	9,218	11,132	15,214	14,062	14,062	17,159	17,159	17,066	10,698	18,814	None.
35. Lancaster & Clay 11	1,627	9,218	13,047	40,331	18,318	11,044	12,678	17,222	26,094	34,351	4,725	100,226
36. Live Oak, Perry & Gulf	47,372	85,113	3,574	1,444	11,728	28,266	4,391	10,670	15,508	21,932	11,582	None.
37. Minneapolis, Northfield & South- ern	47,372	85,113	3,574	1,444	11,728	28,266	4,391	10,670	15,508	21,932	11,582	None.

41. Ashley, Drew & Northern ".....	-76,390	-412,772	13,934	5,801	7,555	24,488	14,973	2,741	11,748	12,130	-14,212	None.
42. Birmingham & Southeastern ".....	11,328	-2,494	30,605	18,932	-9,133	35,898	30,783	14,450	-1,564	12,370	-25,215	66,866
43. Lake Erie, Franklin & Clarion ".....	3,640	3,184	3,973	14,815	20,919	2,867	13,752	14,550	-1,564	12,370	-25,215	66,866
44. Jackson & Eastern ".....	40,689	18,685	22,070	7,787	-32,590	27,936	10,384	9,869	-7,751	-437	-516	40,901
45. Northampton & Bath ".....	28,280	19,434	25,403	20,787	-32,590	27,936	10,384	9,869	-7,751	-437	-516	40,901
46. Logans Valley River ".....	14,146	16,241	32,894	4,369	6,218	5,756	32,974	-9,688	-12,770	-13,867	-15,060	None.
47. West Virginia & Northern ".....	10,595	20,445	21,526	19,887	11,697	15,539	11,310	23,470	14,566	5,655	8,157	None.
48. Miami Mineral Belt ".....	26,777	27,347	23,624	16,692	16,981	1,541	38,186	9,139	4,702	51,438	None.	
49. Midland Terminal ".....	26,777	27,347	23,624	16,692	16,981	1,541	38,186	9,139	4,702	51,438	None.	
50. Wichita Falls & Southern (began July 1, 1921) ".....	4,752	3,108	-607	11,692	12,789	22,734	14,038	-4,126	-45,174	-90,751	-37,911	54,827
51. Oklahoma City & Eastern ".....	26,942	22,598	19,106	6,488	8,980	781	2,272	36,400	38,776	33,164	-88,532	None.
52. Wildwood & Delaware Bay Short Line ".....	20,974	19,205	33,869	23,853	-117	-50,667	3,322	3,836	31,342	22,477	-34,817	None.
53. Jonesboro, Lake City & Eastern ".....	16,451	15,730	6,488	2,229	4,573	12,108	1,899	7,088	-10,628	-4,657	-7,554	33,389
54. East Broad Top Railroad & Coal Co. ".....	13,925	-63,850	-50,718	-	1,150	2,659	35,378	8,570	-10,178	-8,422	-15,594	None.
55. Georgia Northern ".....	-4,327	-1,012	1,589	-5,301	-742	10,964	16,389	-13,041	-11,020	1,909	-11,522	None.
56. Wharton & Northern ".....	-25,966	19,035	-6,977	31,152	-27,660	2,980	-1,834	1,169	81,939	40,906	45,991	37,496
57. Georgia, Florida & Alabama ".....	-43,288	-91,456	-50,799	-45,310	-43,070	-94,077	-35,704	-22,509	-17,420	-10,540	-8,026	24,259
58. Sewell Valley ".....	10,768	15,032	15,047	5,965	43,070	5,502	25,171	24,748	-8,592	-10,540	-8,026	16,088
59. Arkansas, Louisiana & Mississippi City-Ada-Atoka ".....	9,041	6,088	3,966	4,828	4,191	5,663	5,029	-8,592	-3,038	-2,709	-25,128	18,946
60. Oklahoma City-Ada-Atoka ".....	-8,552	-4,944	3,429	-12,254	26,456	-15,653	11,481	-52,787	-4,643	-2,709	-25,128	18,946
61. Birmingham & Northwestern ".....	-6,272	-7,316	-14,635	10,744	-108	13,470	14,157	-3,747	6,763	4,643	-7,999	14,334
62. Tropa ".....	-22,798	-105,227	-8,593	-20,210	-5,888	3,274	7,753	-4,125	1,834	2,763	-25,451	None.
63. Central West Virginia & South- ern ".....	9,000	25,536	3,024	-4,937	-10,529	-11,000	-11,536	-15,403	-14,107	-10,078	-17,794	None.
64. Atlanta & St. Andrews Bay ".....	-35,593	-12,373	-14,106	-11,832	-10,759	-65,966	-110,769	-35,694	-10,402	-15,300	-32,072	None.
65. Chattahoochee Valley ".....	-30,938	-1,768	-8,874	-1,119	-23,408	24,013	6,119	9,412	-3,041	-14,565	-43,477	None.
66. Oneida & Western ".....	8,988	-5,884	822	-1,737	7,666	31,963	8,159	3,922	-2,961	-17,740	-49,984	None.
67. Louisiana Southern ".....	1,797	5,737	10,949	-16,149	-10,949	31,963	8,159	3,922	-2,961	-17,740	-49,984	None.
68. Middletown & Unionville ".....	1,797	5,737	10,949	-16,149	-10,949	31,963	8,159	3,922	-2,961	-17,740	-49,984	None.
69. Louisville & Ohio River ".....	1,797	5,737	10,949	-16,149	-10,949	31,963	8,159	3,922	-2,961	-17,740	-49,984	None.
70. Louisville, Lebanon & Western ".....	9,934	5,334	7,817	6,063	18,988	-13,092	-22,038	-33,034	-42,012	-3,012	-15,008	None.
71. Pittsburgh, Lisbon & Western ".....	9,934	5,334	7,817	6,063	18,988	-13,092	-22,038	-33,034	-42,012	-3,012	-15,008	None.

11 Leased to Seaboard Air Line in 1927.  
12 Leased to Monongahela in 1927.  
13 Leased to Chesapeake & Ohio in 1927.  
14 With Missouri Pacific.  
15 Illinois Terminal.  
16 New Orleans, Texas & Mexico.  
17 Baltimore & Ohio until June 30, 1923; acquired by Chesapeake & Ohio in 1924.  
18 Abandoned, 1926.  
19 With Monongahela.  
20 Leased to G. M. & N.  
21 Abandoned Nov. 26, 1923.  
22 New Orleans, Texas & Mexico until Jan. 31, 1923.  
23 Began April, 1921.  
24 Abandoned Nov. 15, 1928.  
25 With St. Louis-San Francisco.  
26 Sold to St. Louis-San Francisco in 1926.  
27 Included in Reading.  
28 Leased to Chesapeake & Ohio.  
29 Leased to Chesapeake & Ohio.  
30 Abandoned, 1926.  
31 New Orleans, Texas & Mexico until Jan. 31, 1923.  
32 Began April, 1921.

## RAILROAD LEGISLATION



## RAILROAD LEGISLATION

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued

CLASS II CARRIERS—Continued (Annual operating revenues from \$100,000 to \$1,000,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated recapture liability over 11- year period
76. Mississippi River & Bonne Terra <sup>a</sup>	-794	-17,196	-89,071	-221,354	\$16,396	\$2,895	-22,309	-2,309	\$8,081			None.
77. Nevada Copper Belt	-6,033	-15,816	-15,816	-20,138	-11,042	-4,710	-2,309	-2,309	10,088			\$1,362
78. Cisco & Northeastern <sup>a</sup>	13,014	13,014	13,014	13,014	13,014	13,014	13,014	13,014	13,014	13,014	13,014	13,014
79. Morrisdown & Erie	1,804	2,472	3,782	5,716	7,576	9,436	11,296	13,156	15,016	16,876	18,736	15,178
80. Franklin & Abbeville <sup>a</sup>	30,078	7,046	19,232	12,245	4,229	2,310	3,176	3,176	2,895	1,578	10,108	None.
81. Tennessee & North Carolina	5,801	9,265	8,869	5,759	4,229	2,310	3,176	3,176	2,895	1,578	10,108	None.
82. Tennessee Creek	5,801	9,265	8,869	5,759	4,229	2,310	3,176	3,176	2,895	1,578	10,108	None.
83. Toole Valley	5,801	9,265	8,869	5,759	4,229	2,310	3,176	3,176	2,895	1,578	10,108	None.
84. Grayson, Nashville & Ash- down <sup>a</sup>	-7,444	-35,450	-27,727	-21,859	-15,990	-10,120	-4,250	-8,400	-12,550	-16,700	-20,850	None.
85. Fernwood, Columbia & Gulf	-23,019	12,570	2,471	-1,500	10,960	6,513	-32,766	-8,516	23,312	304	3,700	None.
86. Butler County <sup>a</sup>	-28,046	-39,842	-18,078	-5,446	-1,424	7,922	4,211	-17,214	-23,312	-29,407	-35,502	None.
87. Cumberland & Manchester <sup>a</sup>	4,648	-6,720	-8,450	7,046	8,869	10,692	12,515	14,338	16,161	17,984	19,807	None.
88. Esanah & Lake Superior	-19,784	18,969	-2,781	-10,161	-15,022	-21,420	-27,818	-34,216	-40,614	-47,012	-53,410	None.
89. Georgia, Southwest & Gulf	9,789	-19,180	-18,060	-16,944	-15,828	-14,712	-13,596	-12,480	-11,364	-10,248	-9,132	None.
90. Georgia, Southwest & Gulf	9,789	-19,180	-18,060	-16,944	-15,828	-14,712	-13,596	-12,480	-11,364	-10,248	-9,132	None.
91. Minaret & Western <sup>a</sup>	-6,162	12,140	5,023	17,241	3,080	-7,760	-16,833	-23,247	-28,662	-34,076	-39,490	None.
92. East Jordan & Southern	80	6,012	1,817	2,411	3,005	3,599	4,193	4,787	5,381	5,975	6,569	None.
93. Big Sandy & Kentucky River	-15,398	-36,558	-7,179	2,330	1,340	6,489	5,496	4,503	3,510	2,517	1,524	None.
94. Big Sandy & Kentucky River	-15,398	-36,558	-7,179	2,330	1,340	6,489	5,496	4,503	3,510	2,517	1,524	None.
95. High Point, Thomasville & Den- ton <sup>a</sup>	-34,925	-39,799	-47,533	-55,267	-63,001	-70,735	-78,469	-86,203	-93,937	-101,671	-109,405	None.
96. Big Sandy & Cumberland	-24,587	-34,925	-47,533	-55,267	-63,001	-70,735	-78,469	-86,203	-93,937	-101,671	-109,405	None.
97. Blytheville, Leachville & Arkan- sas Southern <sup>a</sup>	-17,222	12,178	7,637	-717	7,516	-4,454	-13,804	-24,228	-34,652	-45,076	-55,500	None.
98. Canton & Carthage <sup>a</sup>	1,742	-68,017	-6,886	-8,188	-103,176	-38,972	-38,184	-37,396	-36,608	-35,820	-35,032	None.
99. Cumberland & Pennsylvania	-7,884	-21,465	-117,531	-45,264	-108,184	-34,335	-54,238	-64,141	-74,044	-83,947	-93,850	None.
100. Chestnut Ridge	-1,580	-19,133	-43	-10,206	-8,677	-7,039	-5,391	-3,743	-2,095	-4,473	-6,855	None.
101. Norwood & St. Lawrence	11,213	-139,838	-32,796	-30,280	-26,761	-23,242	-19,723	-16,204	-12,685	-9,166	-5,647	None.
102. Colorado & Wyoming	-101,270	-136,527	-121,063	-99,030	-74,547	-49,069	-23,582	-7,105	10,989	25,512	40,025	None.
103. Fajardo Creek <sup>a</sup>	2,032	-6,505	8,182	-7,330	-11,047	-15,166	-19,285	-23,404	-27,523	-31,642	-35,761	None.

## RAILROAD LEGISLATION

107. Cowlitz, Chehalis & Cascade	-6,762	-12,843	9,353	10,143	-9,931	-4,471	-12,784	-17,684	-15,977	-11,829	-8,689	None.
108. East Tennessee & Western North Carolina <sup>a</sup>	1,770	-46,431	20,464	7,822	-46,011	-40,524	-44,942	-25,009	-36,598	-37,767	-75,498	None.
109. Nashville, Nashville & Savannah <sup>a</sup>	-24,571	-33,412	-58,513	-72,557	-86,009	-100,000	-114,000	-128,000	-142,000	-156,000	-170,000	None.
110. Tennessee	-25,868	-34,767	-60,034	-21,437	-31,100	-40,767	-50,434	-60,101	-69,768	-79,435	-89,102	None.
111. Longview, Portland & Northern <sup>a</sup>	24,184	-15,812	-9,905	-10,735	-10,062	-9,389	-8,716	-8,043	-7,370	-6,697	-6,024	None.
112. Winston-Salem Southbound	6,498	-16,837	-161,247	-99,890	-97,852	-95,813	-93,774	-91,735	-89,696	-87,657	-85,618	None.
113. Arizona & New Mexico <sup>a</sup>	29,170	29,170	29,170	29,170	29,170	29,170	29,170	29,170	29,170	29,170	29,170	None.
114. Meridian & Rock Hill <sup>a</sup>	-1,570	-2,002	3,690	-1,085	-17,416	-3,379	-2,533	-1,687	-841	-410	-169	None.
115. Sunter Valley	-5,304	-32,002	5,884	-12,516	-21,742	-15,100	-11,958	-8,816	-5,674	-2,532	-888	None.
116. Kanawha, Glen Jean & Eastern	-10,985	-26,379	-7,919	-12,707	-8,296	-13,874	-5,091	-1,849	-1,612	-1,375	-1,138	None.
117. Indian Valley	4,970	-1,420	-5,443	-8,909	-24,664	-15,120	-12,064	-9,008	-6,052	-3,096	-1,140	None.
118. Texas South Eastern	-36,930	-1,327	7,847	-7,847	-487	-1,758	-1,913	-2,068	-2,223	-2,378	-2,533	None.
119. Condorport & Port Allegany	-4,653	-6,799	-9,387	-15,546	-20,429	-25,312	-30,195	-35,078	-39,961	-44,844	-49,727	None.
120. Carroll & Jacksonville <sup>a</sup>	-12,684	-18,108	-522	-9,149	-15,146	-20,143	-25,140	-30,137	-35,134	-40,131	-45,128	None.
121. Upper Merion & Plymouth	-27,000	-3,507	-20,340	-9,566	-15,146	-20,143	-25,140	-30,137	-35,134	-40,131	-45,128	None.
122. Northwestern R. R. of South Carolina	-6,616	-16,558	-1,814	3,227	-8,008	-4,761	-13,520	-30,301	-25,052	-24,359	-23,666	None.
123. Lake Champlain & Noriah	-11,558	-38,115	-38,257	-24,490	-11,305	-41,305	-30,497	-20,689	-10,881	-10,881	-10,881	None.
124. Minnesota Dakota & Western	-23,227	-119,267	13,177	46,499	32,452	1,892	3,668	5,444	7,220	9,000	10,776	None.
125. Maryland & Delaware Coast <sup>a</sup>	-6,281	-6,109	-5,071	-4,376	-3,681	-2,986	-2,291	-1,596	-891	-200	-91	None.
126. Colorado & Southeastern	2,754	-5,282	-6,119	-4,721	-6,223	-6,223	-6,223	-6,223	-6,223	-6,223	-6,223	None.
127. Helena & Southern	2,688	-19,930	-9,099	-9,099	-13,743	-14,802	-15,861	-16,920	-17,979	-19,038	-20,097	None.
128. Missouri Southern	-3,443	2,555	-22,076	-14,232	-12,557	-10,881	-9,205	-7,529	-5,853	-4,177	-2,501	None.
129. Kentucky & Tennessee	-10,439	6,673	-5,717	-1,497	-2,558	-3,617	-4,676	-5,735	-6,794	-7,853	-8,912	None.
130. Tuckerport & Northwestern	-3,128	-5,863	-2,757	-1,497	-2,558	-3,617	-4,676	-5,735	-6,794	-7,853	-8,912	None.
131. Minneapolis, Red Lake & Mani- toba	-608	-9,178	1,232	-10,458	-19,268	-28,078	-36,888	-45,698	-54,508	-63,318	-72,128	None.
132. South Georgia	-9,518	-3,375	-14,300	-6,708	-8,408	-10,108	-11,808	-13,508	-15,208	-16,908	-18,608	None.
Total recapturable												9,637,154
Number of carriers, class II												54

<sup>a</sup> Began operation Apr. 1, 1925.  
<sup>b</sup> El Paso & Southwestern.  
<sup>c</sup> Leased to Gulf, Mobile & Northern, 1923.  
<sup>d</sup> Began operation July 1, 1924.  
<sup>e</sup> Sold to Seaboard Air Line, July 1, 1927.  
<sup>f</sup> Began operations Aug. 1, 1927.  
<sup>g</sup> Began operations Aug. 1, 1927.  
<sup>h</sup> Began operations Aug. 1, 1927.  
<sup>i</sup> Acquired by Texas & Pacific.  
<sup>j</sup> With Morgan & Louisiana & Texas from 1925.

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued

CLASS III CARRIERS (Annual operating revenues below \$100,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated recapture liability over or under year period
1. El Dorado & Western.....	-82,920	\$28,770	\$40,428	\$33,878	\$40,277	\$48,241	\$24,925	\$1,317	\$17,802	\$2,346	\$16,992	\$28,053
2. Unity Railways.....	1,257	-9,163	-812	16,583	9,747	35,015	21,890	-2,760	38,150	35,338	28,570	195,669
3. De Kalb & Western.....	-6,699	8,751	11,374	14,459	16,275	31,277	21,890	-2,760	38,150	35,338	28,570	195,669
4. Kankakee & Western.....	-3,014	-3,714	-11,431	-21,233	22,520	12,536	22,487	15,294	15,931	32,192	18,061	175,516
5. Kankakee Southern.....	7,448	12,070	6,467	1,704	3,638	15,139	32,325	35,811	10,759	4,506	7,165	120,471
6. Appalachian.....	-18,535	-19,028	-18,150	-13,130	-12,033	17,460	20,098	13,935	22,675	27,774	23,269	84,147
7. Fairport, Painesville & Eastern.....	8,989	12,723	-36	4,450	-40,281	-35,072	-21,255	22,109	15,535	20,501	-14,136	None.
8. Kellys Creek & Northwestern.....	4,345	6,985	7,807	4,659	8,009	8,624	17,732	9,895	11,382	547	-12,518	67,457
9. Erie & Michigan Ry. & Naviga- tion Co.....	-2,851	6,921	19,035	-7,547	10,295	18,300	10,359	-500	8,441	6,485	-7,384	37,680
10. Rockcastle Valley.....	2,631	18,876	14,744	14,049	8,198	12,672	5,773	-1,494	-11,945	-7,590	-15,156	23,912
11. Rockcastle River.....	3,241	19,424	7,727	20,782	7,087	17,839	12,717	10,066	-3,813	6,875	4,240	33,912
12. Newkum North.....	-20,401	-21,442	-10,580	-35,182	1,407	33,003	12,717	10,066	-3,813	-15,100	-14,809	None.
13. Silverton.....	2,604	10,144	16,049	18,009	1,174	5,553	6,059	5,577	4,688	6,268	3,878	32,238
14. Great Haven & Bructon.....	2,756	2,756	3,994	1,859	1,744	4,348	11,271	6,024	1,934	6,095	-905	None.
15. Mount Hood.....	7,775	3,154	7,627	1,859	15,135	7,452	11,067	-18,500	1,199	-3,811	-3,878	12,468
16. Cement, Tolamas & Tillawater.....	3,164	3,371	8,567	10,826	8,585	5,500	6,125	5,010	-8,029	-3,780	3,945	10,731
17. Port Townsend & Puget Sound.....	10,657	-1,310	-6,062	5,263	4,945	5,404	6,125	-3,883	12,430	-9,141	4,180	None.
18. Mansfield Ry. & Transportation.....	342	11,761	6,894	4,813	-7,940	-18,473	-4,702	-3,883	1,301	1,301	-1,301	None.
19. Modesta & Empire Traction.....	2,780	1,949	5,457	2,739	-4,120	-5,173	-4,702	-2,380	69	1,336	-1,743	21,402
20. Augusta Northern.....	-2,684	-977	1,069	2,908	4,659	3,908	3,379	782	6,597	9,969	3,683	23,437
21. Carbon County.....	892	-	-	-8,827	-8,827	1,710	3,379	782	6,597	9,969	3,683	23,437
22. Klamath & Hines.....	-12,010	-1,626	-2,071	-4,201	7,334	6,267	3,379	782	6,597	9,969	3,683	23,437
23. Neamok & Shasta.....	-3,993	3,288	13,279	-20,579	-9,050	1,000	2,940	1,852	6,597	9,969	3,683	23,437
24. Bennettsville & Cheraw.....	-1,040	-2,163	-8,827	3,005	4,716	1,000	2,940	1,852	6,597	9,969	3,683	23,437
25. Birmingham, Selma & Mobile.....	-1,884	-10,039	-6,797	5,237	3,396	2,100	2,940	1,852	6,597	9,969	3,683	23,437
26. Mount Hope Mineral.....	-6,647	3,436	13,048	1,256	-4,893	4,893	4,893	1,300	1,315	4,107	-334	12,066
27. Warren & Ouchitla Valley.....	-	5,646	1,539	6,905	-1,256	4,893	4,893	1,300	1,315	4,107	-334	12,066

35. Alabama & Northwestern.....	-2,212	-2,243	882	3,301	1,514	6,537	3,611	-3,018	-2,812	10,077	4,139	2,180
36. Sandersville.....	-1,617	1,403	2,835	3,767	6,217	1,543	-2,487	-1,800	-1,352	-2,570	-5,779	3,590
37. Kansas & Sidel.....	-3,918	-3,195	1,233	-3,767	5,025	1,969	-2,487	-2,769	-1,251	-2,214	965	None.
38. Silgo & Eastern.....	6,969	-10,003	-8,608	4,496	-1,106	-10,632	-2,850	-17,212	-16,785	-21,068	-3,983	None.
39. Baxtie & Northern.....	7,339	-3,589	-6,801	8,829	-3,562	-47,499	-20,493	-4,271	-2,880	1,177	6,900	None.
40. Santa Maria Valley.....	1,358	6,268	766	-106	5,731	3,802	3,802	8,924	-1,103	-1,305	-301	8,386
41. Hopedale, Yorktown & Tan- plott.....	-192	-2,105	-1,141	-92	-337	1,370	2,925	-2,235	-1,030	-1,305	-301	14,017
42. Glare & Western.....	-8,539	-11,531	-1,141	8,045	-1,337	-1,141	-1,141	-2,235	-1,030	-1,305	-301	7,217
43. Kankakee Central.....	2,523	14,066	2,171	8,045	-1,337	-1,141	-1,141	-2,235	-1,030	-1,305	-301	7,217
44. Erie & Eastern.....	-2,005	-2,913	-6,424	10,734	-23,998	-2,512	-2,100	-2,486	4,843	2,920	-3,615	None.
45. Picketts.....	-2,201	-3,836	-2,485	-2,259	-2,152	-14,813	-14,148	-12,668	-13,657	-10,673	10,086	None.
46. Amador Central.....	-9,788	-10,507	-20,713	-2,548	-10,349	-18,611	-19,511	-15,239	-13,657	-10,673	10,086	None.
47. Reynoldsville & Falls Creek.....	1,811	4,133	1,727	288	288	4,850	4,850	-2,486	4,843	2,920	-3,615	None.
48. Atlantic & Carolina.....	-9,390	-14,875	8,391	1,182	-10,884	-17,690	5,146	-4,456	-2,196	2,156	-1,370	None.
49. French Broad & Mount Morris.....	-12,728	-14,256	8,347	4,373	-9,056	-2,389	2,807	-2,572	-2,314	2,535	-11,279	None.
50. Washington & Lincoln.....	1,892	-14,863	-4,347	-5,742	-8,100	-12,633	5,799	-370	-2,314	2,535	-11,279	None.
51. Salem, Winona & Southern.....	1,141	-11,586	-14,537	-5,742	-8,100	-12,633	5,799	-370	-2,314	2,535	-11,279	None.
52. Pecos Valley Southern.....	-8,306	4,114	2,742	-12,020	-2,900	-1,768	-6,212	-13,157	-8,101	-2,455	-8,413	None.
53. Christie & Eastern.....	-2,603	-2,062	-775	-5,117	-553	2,325	772	-976	3,699	-2,455	-7,988	871
54. Moscow, Camden & San Augus- tine.....	-3,024	2,629	15	-2,405	-3,539	-2,815	-2,815	-212	3,699	-2,455	-7,988	None.
55. Natchez, Urania & Ruston.....	-1,444	3,049	-2,630	-11,567	-4,720	-2,561	-2,229	-1,814	1,985	-1,822	-4,783	None.
56. Shreveport, Houston & Gulf.....	-2,031	2,597	212	-1,095	-18,189	-3,533	1,459	-12,967	-6,922	-5,712	-6,655	None.
57. Nacogdoches & Southeastern.....	-10,696	-24,354	-14,308	-10,207	-18,189	-3,533	1,459	-12,967	-6,922	-5,712	-6,655	None.
58. Duphian, Kensett & Seary.....	4,874	-9,170	-1,460	-4,381	-3,311	-27,798	-7,190	-97	-1,131	-2,109	-5,093	None.
59. Puger Sound & Cascade.....	-17,580	-10,372	-10,014	-8,017	-7,742	-2,140	1,548	-1,701	-630	3,100	-7,093	None.
60. Bull & Hammond.....	-3,236	-3,378	-3,378	-3,378	-3,378	-3,378	-3,378	-3,378	-3,378	-3,378	-3,378	None.
61. Superior & Southeastern.....	-6,457	-3,622	-3,028	-1,085	1,395	4,683	1,573	-3,744	-1,305	3,363	-713	None.
62. Beaver, Meade & Englewood.....	-2,237	-2,842	-4,281	-2,276	1,698	-874	2,829	-7,412	1,071	1,028	-8,290	None.
63. Manistee & Repton.....	-2,424	-1,836	1,836	2,319	-591	-6,545	-3,220	-2,854	-6,098	-1,439	-2,004	None.
64. Atlantic & Western Ry. Co.....	-4,980	-4,017	-7,241	-2,727	-7,725	-6,436	537	-40	-1,313	693	-10,533	None.
65. Denison, Bonham & New Or- leans.....	-2,237	-2,842	-4,281	-2,276	1,698	-874	2,829	-7,412	1,071	1,028	-8,290	None.
66. Mississippi & Alabama.....	-2,424	-1,836	1,836	2,319	-591	-6,545	-3,220	-2,854	-6,098	-1,439	-2,004	None.
67. Motley County.....	-2,424	-1,836	1,836	2,319	-591	-6,545	-3,220	-2,854	-6,098	-1,439	-2,004	None.
68. Central Ry. of Arkansas.....	-2,424	-1,836	1,836	2,319	-591	-6,545	-3,220	-2,854	-6,098	-1,439	-2,004	None.
69. Tennessee, Kentucky & Northern.....	-2,424	-1,836	1,836	2,319	-591	-6,545	-3,220	-2,854	-6,098	-1,439	-2,004	None.
70. Cape Fear Ry. (Inc.).....	-4,980	-4,017	-7,241	-2,727	-7,725	-6,436	537	-40	-1,313	693	-10,533	None.
71. Washington Run.....	-4,980	-4,017	-7,241	-2,727	-7,725	-6,436	537	-40	-1,313	693	-10,533	None.

<sup>a</sup> Ceased operation, 1930, 1928-1930.  
<sup>b</sup> Operated by T. & A. 1, 1927.  
<sup>c</sup> Abandoned in May, 1924.  
<sup>d</sup> Abandoned in March, 1923.  
<sup>e</sup> Began operations Sept. 1, 1922.  
<sup>f</sup> St. Louis-San Francisco, 1928.  
<sup>g</sup> Abandoned December, 1925.  
<sup>h</sup> Began operations, 1927.  
<sup>i</sup> Began operations in May, 1924.  
<sup>j</sup> Abandoned in March, 1923.  
<sup>k</sup> Began operations July 5, 1923.  
<sup>l</sup> Began operations, 1928.  
<sup>m</sup> Abandoned, 1926.

*Statement showing for each railroad subject to recapture in one or more years from 1920 to 1980, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued*

CLASS III CARRIERS—Continued (Annual operating revenues below \$100,000)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated respective liability over 11- year period
77. Shelby County	-83,167	\$384	\$1,757	-81,133	-82,096	-81,788	-83,975	-83,909	-84,387	\$1,345	-84,590	None.
78. Lovell & Beaver River	-1,649	-8,306	-3,280	-6,985	3,825	-2,217	-5,931	-5,897	-2,431	-10,396	-5,152	None.
79. Fordyce & Princeton	-8,569	3,306	-1,334	-8,717	-4,818	-2,704	-6,993	-6,407	-8,021	-10,396	-5,119	None.
80. Louisville, New Albany & Cory-	-597	-3,896	-5,590	-1,740	-4,158	535	625	-2,166	2,241	-4,022	-7,918	None.
81. Gladys & Alpena	-3,779	-3,224	-1,204	-330	-11	-11	-11	-11	333	1,618	1,248	None.
82. Louisiana & Pine Bluff	-22,732	-2,639	-1,203	-10,844	-12,621	-3,276	3,165	1,146	-8,547	-10,683	-8,195	None.
83. Buffalo Union Carolina	-2,388	-470	4,004	2,131	-1,413	2,838	3,805	-5,969	5,294	-10,683	-8,195	None.
84. Larkin, Hemphill & Gulf	-2,736	745	2,282	-1,179	-8,975	-10,013	-8,865	-9,109	-11,409	-10,683	-8,195	None.
85. Leesville, Shagel & Eastern	-29,422	-11,445	-6,711	-7,454	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
86. West Pittston-Freder *	1,784	439	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
87. Goshen Valley	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
88. West Pittston-Freder *	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
89. Ashburn, Ashburn, Sylvester &	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
90. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
91. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
92. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
93. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
94. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
95. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
96. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
97. Canby	1,750	491	9,257	3,704	-8,059	-2,574	-6,772	3,007	-11,191	-7,000	-14,087	None.
98. Dover & South Bound	-620	-1,064	-369	104	-2,530	-10,175	-6,122	1,064	-13,122	-13,550	-13,941	None.
99. Dover & Mountain	-1,664	-2,103	-8,409	-372	-3,593	-4,019	-4,215	-4,541	-4,672	-5,141	-7,104	None.
100. Hillsboro & Northwestern	762	732	3,110	-324	-7,844	-7,201	-4,440	-6,261	-4,672	-5,141	-7,104	None.
101. Hillsboro & Northwestern	762	732	3,110	-324	-7,844	-7,201	-4,440	-6,261	-4,672	-5,141	-7,104	None.
102. Kishwaukee Valley	-1,351	-8,680	6,120	2,443	6,046	-6,070	-835	1,844	8	721	1,327	None.
103. Kishwaukee Valley	-1,351	-8,680	6,120	2,443	6,046	-6,070	-835	1,844	8	721	1,327	None.
104. Cadiz	-17,352	-13,102	1,343	3,268	3,660	-105	629	7,409	-15	-14	-103	None.
105. Black Mountain	86	1,173	3,244	3,061	3,645	3,645	3,304	3,032	-2,967	-1,986	-1,986	None.
106. Mississippi Export	-8,579	-17,548	-6,486	1,060	-10,936	-13,181	-8,396	3,156	-7,447	-5,121	-13,471	None.
107. Mississippi Export	-8,579	-17,548	-6,486	1,060	-10,936	-13,181	-8,396	3,156	-7,447	-5,121	-13,471	None.
108. Alabama Central	-338	-3,575	-1,992	-1,992	-1,625	-31	-1,472	-5,320	-1,754	1,048	-743	None.
109. Alabama Central	-338	-3,575	-1,992	-1,992	-1,625	-31	-1,472	-5,320	-1,754	1,048	-743	None.
110. Georgia, Ashburn, Sylvester & Canby	-338	-3,575	-1,992	-1,992	-1,625	-31	-1,472	-5,320	-1,754	1,048	-743	None.
110. Murfreesboro, Nashville & S. W	-772	-10,018	928	-673	-1,781	-3,536	-9,759	-5,210	-12,401	-2,231	-105	None.
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1111.	Thornton & Alexandria.	-8,742	-4,541	-9,705	-14,909	-438	919	-10,498	-12,124	-13,687	-14,904	None.
1112.	Kinston Carolina st.	-6,135	-3,304	-7,242	-7,509	-5	-5	-5,855	-6,429	-6,868	-7,242	None.
1113.	Kite & Valley.	-6,030	-1,535	35	7,119	353	353	-3,400	-3,400	-3,628	-3,628	None.
1114.	Rural Valley e.	-22,490	-6,709	-6,185	-8,541	-11,059	-11,059	-5,709	-2,220	-2,821	-5,530	None.
1115.	Crail Mountain	-6,298	-1,714	829	-8,541	-2,102	-2,102	-5,709	-2,220	-2,821	-5,530	None.
1116.	Graham County <sup>a</sup>	-6,138	-12,214	-12,214	-7,003	-2,506	-2,506	-3,400	-3,400	-3,628	-3,628	None.
1117.	Bellevue Center	-6,285	-4,763	-4,480	-6,005	-1,441	-1,441	-2,376	-2,276	-2,688	-3,192	None.
1118.	Bellevue Center & North Eastern	672	-4,578	-2,549	-7,144	-7,710	-7,710	-2,555	-7,710	-7,121	-7,121	None.
1119.	Washington & Brandywine	-8,810	-2,444	-10,340	-8,434	-9,887	-9,887	-3,743	-659	-2,786	-4,223	None.
21.	Point Lookout.											None.
22.	Carolina Southern.											None.
23.	Bonhomie & Hattiesburg South- ern <sup>a</sup>	( <sup>10</sup> )	( <sup>10</sup> )	( <sup>10</sup> )	( <sup>10</sup> )	-6,200	-6,200	-4,585	-5,026	-5,026	-3,768	None.
24.	Farmington	( <sup>10</sup> )	547	-687	-2,863	-4,020	-4,020	-5,106	-5,202	-2,860	-3,854	None.
25.	Marcellus & Olisco Co. <sup>a</sup>	( <sup>10</sup> )	-1,265	-4,344	-2,886	-1,108	-1,108	-3,178	-5,202	-1,010	-9,550	None.
26.	Kinder & Northwestern <sup>a</sup>		-505	-3,782	-1,225	-2,385	-2,385	-1,699	( <sup>10</sup> )	( <sup>10</sup> )	( <sup>10</sup> )	None.
27.	Augusta.		-45	-523	-1,122	-1,122	-1,122	-1,122	-1,122	-1,122	-1,122	None.
28.	Rowlesburg & Southern		-1,857	-1,857	-1,857	-2,838	-2,838	-1,576	-3,128	-3,128	-3,128	None.
29.	Penningsburg & Northern		-1,857	-1,857	-1,857	-2,838	-2,838	-1,576	-3,128	-3,128	-3,128	None.
30.	Union City & Western <sup>a</sup>		-1,857	-1,857	-1,857	-2,838	-2,838	-1,576	-3,128	-3,128	-3,128	None.
31.	Galborton		-354	-354	-354	-673	-673	-205	-1,674	-1,674	-1,674	None.
32.	Little River		-324	-1,484	-8,113	-4,886	-4,886	-3,224	-4,973	-4,451	-1,555	None.
33.	Gilboa & North Island <sup>a</sup>		-2,972	-6,509	-19,347	-1,009	-1,009	-6,525	( <sup>10</sup> )	( <sup>10</sup> )	( <sup>10</sup> )	None.
34.	Midtown Air Line <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
35.	North, Hanna City & Western <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
36.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
37.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
38.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
39.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
40.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
41.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
42.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
43.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
44.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
45.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
46.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
47.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
48.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
49.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
50.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
51.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
52.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
53.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
54.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
55.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
56.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
57.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
58.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
59.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
60.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
61.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
62.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
63.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
64.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
65.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
66.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
67.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
68.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
69.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
70.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
71.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
72.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
73.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
74.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
75.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
76.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
77.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
78.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
79.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
80.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
81.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
82.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
83.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
84.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
85.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
86.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
87.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
88.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
89.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
90.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
91.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
92.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
93.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
94.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
95.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
96.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
97.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
98.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
99.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
100.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
101.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
102.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
103.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
104.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
105.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
106.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
107.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
108.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	None.
109.	Union City & White Plains <sup>a</sup>		-1,100	-1,100	-1,100	-1,100	-1,100	-1,100	-1,100</			

<sup>68</sup> Cased operations, 1923.  
<sup>69</sup> Began operation Mar. 1, 1927.  
<sup>70</sup> Acquired by D. & R. G. Western June 1, 1927.  
<sup>71</sup> Abandoned, 1924.  
<sup>72</sup> Abandoned, 1920.  
<sup>73</sup> Began operation, June 1, 1921.  
<sup>74</sup> Began operation, Jan. 1, 1921.  
<sup>75</sup> Sold, 1921.  
<sup>76</sup> Began operation Dec. 15, 1925.  
<sup>77</sup> Began operations 1921.  
<sup>78</sup> Abandoned Sept. 5, 1927.  
<sup>79</sup> Merged St. Louis & Southwestern 1930.  
<sup>80</sup> Began operations 1923.  
<sup>81</sup> Abandoned Dec. 31, 1927.  
<sup>82</sup> Sold 1927.  
<sup>83</sup> Abandoned, Apr. 14, 1927.  
<sup>84</sup> Began operations, 1926.  
<sup>85</sup> Began operations, 1923.  
<sup>86</sup> Began operation June 1, 1922.  
<sup>87</sup> Began operation July 7, 1925.  
<sup>88</sup> Acquired by Allegheny & Western in 1925.  
<sup>89</sup> Began operation Sept. 1, 1925.



## RAILROAD LEGISLATION

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued

CLASS IV CARRIERS—Continued (Switching and terminal companies, excluding those shown under class I)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated recapture liability over 11- year period
12. Illinois Northern.....	-86,486	-84,825	-165	\$8,032	-867	\$24,033	\$38,785	\$37,418	\$54,338	\$46,742	-\$2,450	\$162,755
13. Chicago, West Pullman & South- land.....	14,995	-1,596	1,215	24,381	3,432	29,065	21,992	33,132	36,892	29,647	3,631	194,417
14. Canton.....	-42,383	-26,159	828	-6,189	-27,816	-20,765	-44,130	6,265	46,723	88,441	23,975	None.
15. Philadelphia, Bethlehem & New England.....	-99,680	85,685	28,099	49,649	-8,301	-30,318	-6,004	-17,480	9,401	64,825	-10,492	None.
16. Rock-Island Frisco Terminal.....	13,082	13,833	12,159	12,117	14,427	10,074	9,702	22,446	22,052	71,976	-78,681	None.
17. Athol Coal & Iron .....	13,655	35,760	15,688	83,147	13,028	7,549	7,781	17,374	4,016	10,915	11,941	None.
18. Cuyahoga Valley.....	-80,756	-8,951	105,082	-20,467	13,498	5,765	27,741	-14,904	-23,960	-3,978	8,965	None.
19. Cuyahoga & Bureau County.....	-22,234	-19,978	-3,939	13,682	23,634	7,781	27,741	-14,904	-23,960	-3,978	8,965	None.
20. St. Paul Bridge & Terminal.....	14,269	2,518	11,060	16,397	13,028	5,765	27,741	-14,904	-23,960	-3,978	8,965	None.
21. Missouri & Illinois Bridge & Belt Terminal.....	11,253	-7,712	24,401	13,498	23,634	7,781	27,741	-14,904	-23,960	-3,978	8,965	None.
22. St. Paul Bridge & Terminal.....	-10,913	-15,149	18,020	20,375	4,772	27,074	18,598	-14,904	-23,960	-3,978	8,965	None.
23. Union Stock Yards of Omaha .....	-37,288	-13,201	18,020	20,375	4,772	27,074	18,598	-14,904	-23,960	-3,978	8,965	None.
24. Steelton & Highgate.....	13,176	13,336	12,641	11,908	-60,883	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
25. Oregon Union Railway & Depot.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
26. Oklahoma City Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
27. Oklahoma City Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
28. Union Terminal (St. Joe).....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
29. Union Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
30. Union Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
31. Union Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
32. Union Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
33. Union Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
34. Dayton Union.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
35. Norfolk & Portsmouth Belt Line.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
36. Hoboken Manufacturers .....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
37. Houston Belt & Terminal.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
38. Des Moines Union.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
39. Des Moines Union.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
40. Indiana Northern.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
41. Union Freight.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
42. Ludington & Stony Creek.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
43. Johnston & Stony Creek.....	-20,877	-22,024	-25,186	70,042	-94,785	-95,166	-57,615	-4,872	3,830	31,615	4,409	None.
44. East Jersey R. R. & Terminal.....	-46,349	22,837	49,842	-58,622	-51,472	-15,108	-9,029	-34,850	-25,747	-1,960	-60,282	None.

## RAILROAD LEGISLATION

45. Youngstown & Northern.....	-28,470	-34,189	12,814	-7,357	-15,048	-395	9,815	-17,229	-7,548	-25,464	-40,315	None.
46. Peoria Terminal .....	-34,331	-20,762	-20,650	-21,064	-25,240	7,788	10,429	-4,918	-10,641	-164,685	-7,445	None.
47. Elva & Montrose.....	-15,610	-11,067	-85,302	-77,366	-18,468	-10,972	-20,022	-14,587	-9,479	13,457	-37,917	None.
48. Los Angeles Junction .....	-38,681	-142,324	10,095	1,789	-20,389	-15,475	-27,366	-12,967	-38,616	-32,919	-37,372	None.
49. Warrior River Terminal .....	-20,693	-64,220	10,197	1,949	-31,522	-31,246	-31,246	-42,967	-25,896	-25,896	-25,896	None.
50. New York Dock.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
51. Donora Southern.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
52. Manufacturers Railway .....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
53. South Omaha Terminal .....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
54. New Haven & Dunbar.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
55. Kentucky & Indiana Terminal.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
56. Manufacturers Junction.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
57. Wyandotte Terminal.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
58. Kansas City Commercial.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
59. Erie Co. Commercial.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
60. Pittsburgh, Allegheny & Mc- Kees Rock.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
61. Texas, Pacific-Missouri, Pacific Terminal of New Orleans.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
62. Berlin & Alton.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
63. Pennsylvania.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
64. Pecos & Western.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
65. Belt Line Ry. (Montgomery, Ala.).....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
66. Fore River.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
67. Kansas City, Shreveport & Gulf.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
68. Chicago & Calumet River.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
69. Burlington, Muscatine N. & W.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
70. Iowa Transfer.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
71. Howard Terminal.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
72. Massena Terminal.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
73. Salt Lake City Union Depot.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
74. Salt Lake City Junction.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
75. Oklahoma City Terminal.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
76. Springfield Terminal.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
77. Piquette Terminal.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
78. Lake Erie & Fort Wayne .....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
79. Fort Wayne Union Ry.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
80. Total recapturable.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.
81. Number of carriers, Class IV.....	-4,425	-24,316	-6,602	8,737	-6,324	8,808	1,900	5,532	-1,183	24,782	-28,145	None.

80. Abandoned, 1930.  
81. Began operations May 1, 1925.  
82. Successor to Union Stockyards of Omaha, effective June 1, 1927.  
83. Began operations July 1, 1927.  
84. Began operations June 1, 1927.

85. Sold, 1930.  
86. Ceased operation Oct. 31, 1928.  
87. In Wabash, 1929.  
88. Began operations June 1, 1925.

89. Began Sept. 1, 1925.  
90. Began operation May 1, 1925.  
91. Successor to Union Stockyards of Omaha, effective June 1, 1927.  
92. Began operations July 1, 1927.  
93. Began operations June 1, 1927.

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued

CLASS IV CARRIERS—Continued (Switching and terminal companies, excluding those shown under class I)	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated recapture liability over 11- year period
1. Chicago & Western Indiana	\$21,829	\$180,462	\$188,298	\$185,075	\$66,019	\$127,997	\$16,735	-\$5,188	-\$34,122	-\$9,702	-\$37,244	\$708,122
2. Ironton	34,695	85,478	125,018	65,016	139,312	107,773	22,155	20,133	77,088	78,979	26,747	692,483
3. St. Paul Union Depot	81,011	72,078	50,948	61,109	139,312	107,773	22,155	20,133	77,088	78,979	26,747	151,114
4. Chicago & Illinois Western	29,375	52,021	50,465	61,109	139,312	107,773	22,155	20,133	77,088	78,979	26,747	183,280
5. Fort Worth Belt	23,748	33,608	41,027	42,618	44,436	37,151	22,399	29,333	18,631	29,851	32,747	207,351
6. Texas City Connecting	43,457	24,708	25,332	21,833	18,257	16,403	15,877	29,333	30,734	29,851	32,747	207,351
7. Chicago Short Line	13,222	32,818	72,240	17,704	49,727	28,538	32,789	63,718	34,837	41,027	43,222	107,900
8. Birmingham Southern	23,223	54,337	72,240	17,704	49,727	28,538	32,789	63,718	34,837	41,027	43,222	107,900
9. Chicago Heights Terminal	21,442	26,857	25,333	23,108	21,656	16,705	19,932	19,932	31,674	13,068	13,068	None
10. Arkansas & Memphis	21,311	26,857	25,333	23,108	21,656	16,705	19,932	19,932	31,674	13,068	13,068	None
11. Kansas & Oklahoma	14,995	1,596	1,515	24,381	3,432	28,095	21,962	33,133	36,892	29,647	3,631	198,417
12. Chicago, West Fullman & South- ern	42,383	29,159	1,515	24,381	3,432	28,095	21,962	33,133	36,892	29,647	3,631	198,417
13. Philadelphia, Bethlehem & New England	99,390	85,685	28,009	49,049	8,361	30,763	46,723	88,441	88,441	23,973	None	None
14. Rock Island-Frisco Terminal	13,082	13,833	12,159	12,117	11,713	11,469	11,176	17,769	9,401	84,825	10,492	None
15. South Buffalo	3,658	35,700	15,698	83,147	14,422	10,810	20,466	17,480	9,401	84,825	10,492	None
16. Cuyahoga Valley	23,234	2,518	1,601	18,307	3,463	7,735	7,029	7,735	22,062	9,027	8,883	162,682
17. LaSalle & Bureau County	14,292	3,744	29,281	13,400	3,369	4,765	27,741	14,904	22,062	9,027	8,883	None
18. Missouri & Illinois Bridge & Bel.	11,253	7,712	24,401	4,060	4,060	4,765	27,741	14,904	22,062	9,027	8,883	None
19. St. Louis Union Depot	10,913	15,149	18,020	28,379	26,692	9,678	2,798	1,290	336	31,615	4,400	None
20. Union Stock Yards of Omaha	13,201	10,838	20,475	4,772	27,014	18,505	1,290	336	31,615	4,400	4,400	None
21. Union Terminal (Dallas)	17,726	12,011	10,868	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
22. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
23. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
24. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
25. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
26. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
27. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
28. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
29. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
30. Union Terminal (Dallas)	20,597	23,624	22,184	10,868	21,136	36,466	57,614	62,041	33,974	3,362	5,164	None
31. River Terminal (St. Joe)	113,223	113,223	13,000	18,111	43,484	1,267	9,338	2,665	56,066	35,243	77,222	13,430
32. St. Joseph Belt	16,971	16,971	13,000	18,111	43,484	1,267	9,338	2,665	56,066	35,243	77,222	25,915

## RAILROAD LEGISLATION

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33. East St. Louis Junction	28,407	6,742	16,245	15,274	469	1,130	3,272	1,691	863	18,227	20,731	None
34. Dayton Union	349	4,259	5,019	4,011	370	2,714	3,970	2,660	5,437	4,815	40,107	None
35. Norfolk & Portsmouth Belt Line	(*)	11,551	25,163	2,255	370	2,714	15,411	47,065	43,328	18,151	17,713	None
36. Hoboken Manufacturers	28,095	4,097	10,628	(*)	963	2,400	17,010	25,723	28,761	33,662	7,926	None
37. Houston Belt & Terminal	28,095	4,097	10,628	(*)	963	2,400	17,010	25,723	28,761	33,662	7,926	None
38. Hamilton Connecting	28,095	4,097	10,628	(*)	963	2,400	17,010	25,723	28,761	33,662	7,926	None
39. Indiana Northern	7,648	23,157	85,643	124,933	114,027	116,134	114,724	126,417	90,789	90,596	91,543	None
40. Union Freight	3,153	11,924	7,194	6,037	1,807	6,425	3,158	2,023	6,710	5,979	1,388	None
41. Johnston & Northern	2,862	3,520	3,846	3,760	3,760	7,119	4,412	12,743	5,877	5,877	1,388	None
42. Johnston & Stony Creek	457	5,777	10,691	3,412	4,471	7,722	4,476	2,850	18,665	9,419	3,841	None
43. Johnston & Stony Creek	457	5,777	10,691	3,412	4,471	7,722	4,476	2,850	18,665	9,419	3,841	None
44. East Jersey R. & Terminal	26,476	22,837	18,412	15,421	15,421	15,168	9,029	34,865	28,747	1,060	60,282	None
45. Fongstown & Northern	26,476	22,837	18,412	15,421	15,421	15,168	9,029	34,865	28,747	1,060	60,282	None
46. Los Angeles Junction	34,331	20,762	20,650	21,084	25,240	7,788	10,420	8,008	10,466	184,065	40,315	None
47. Los Angeles Junction	34,331	20,762	20,650	21,084	25,240	7,788	10,420	8,008	10,466	184,065	40,315	None
48. Los Angeles Junction	34,331	20,762	20,650	21,084	25,240	7,788	10,420	8,008	10,466	184,065	40,315	None
49. Los Angeles Junction	34,331	20,762	20,650	21,084	25,240	7,788	10,420	8,008	10,466	184,065	40,315	None
50. Winona Bridge	15,610	11,087	7,702	10,169	18,468	10,972	20,022	14,587	9,479	13,457	2,917	None
51. Pittsburgh & Ohio Valley	38,601	142,324	63,302	77,389	18,468	10,972	20,022	14,587	9,479	13,457	2,917	None
52. Pullman Dock	38,601	142,324	63,302	77,389	18,468	10,972	20,022	14,587	9,479	13,457	2,917	None
53. Pullman Dock	38,601	142,324	63,302	77,389	18,468	10,972	20,022	14,587	9,479	13,457	2,917	None
54. Donora Southern	20,663	64,229	10,197	1,940	37,892	2,627	31,832	42,967	38,616	25,856	48,659	None
55. Manufacturers Railway	10,453	24,186	3,082	9,976	13,797	8,322	6,249	1,152	16,207	23,899	58,161	None
56. South San Francisco Belt	4,482	4,319	5,022	6,324	6,324	8,068	1,906	9,446	1,193	11,068	3,338	None
57. South Omaha Terminal	271	9,815	1,827	2,435	8,865	7,555	6,684	4,759	7,787	1,526	1,675	None
58. New York & Indiana Terminal	2,392	9,815	1,827	2,435	8,865	7,555	6,684	4,759	7,787	1,526	1,675	None
59. Manufacturers Junction	40,173	1,145	13,409	14,279	9,059	1,766	1,411	13,837	193	7,389	2,387	None
60. Manufacturers Junction	39,995	25,494	26,613	2,000	1,881	4,412	2,969	7,544	35,708	1,848	48,659	None
61. Wyandotte Terminal	12,458	4,544	1,204	6,405	2,543	4,947	3,407	6,897	25,708	1,091	8,525	None
62. Kansas City Connecting	5,530	2,771	13,632	13,153	13,153	13,153	13,153	13,153	13,153	13,153	13,153	None
63. East Erie Commercial	68	6,529	8,357	13,558	19,431	28,285	5,975	24,561	23,911	9,438	28,893	None
64. Pittsburgh, Allegheny & McKees- Terminai of New Orleans	34,365	78,881	25,002	25,002	13,230	3,284	10,381	11,449	1,001	5,084	4,564	None
65. Texas Pacific-Missouri Pacific Terminal of New Orleans	34,365	78,881	25,002	25,002	13,230	3,284	10,381	11,449	1,001	5,084	4,564	None
66. Berlin Mills	8,267	525	213	3,007	2,574	2,574	2,574	3,007	1,615	1,168	56,628	None
67. Lorain & Southern	1,538	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	None
68. Peneysville & Philadelphia	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	None
69. Baltimore & Annapolis	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	None
70. Belt Line Ry. (Montgomery, Ala.)	16	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	1,094	2,004

\* Abandoned 1920.  
 \* Based Sept. 13, 1925.  
 \* South Omaha Terminal, 1928.  
 \* Began operations July 1, 1927.  
 \* Began operating May 1, 1927.  
 \* Began operations 1922.  
 \* Began Sept. 1, 1925.  
 \* Began operating May 1, 1926.  
 \* Successor to Union Stockyards of Omaha, effective June 1, 1927.

Statement showing for each railroad subject to recapture in one or more years from 1920 to 1930, inclusive, one-half of the excess over or deficiency under a return of 6 per cent for each year and the estimated recapture liability computed over the full period of 11 years—Continued

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	Estimated liability over 11-year period
<b>Class IV Carriers—Continued</b> (Switching and terminal companies, excluding those shown under class I)												
71. Fore River.....	\$2,029	-\$2,515	-\$11,643	-\$14,261	-\$17,180	-\$3,946	-\$8,005	-\$13,373	-\$10,128	-\$10,145	-\$10,122	None.
72. Kansas City, Shreveport & Gulf	-629	-9,157	1,324	-3,267	-989	-1,529	-615	-905	69	351	226	None.
73. Chicago & North Western	-7,576	-17,284	1,706	216	-10,933	-6,856	-16,890	-16,784	-17,600	-17,512	-20,640	None.
74. Burlington, Muscatine N. & W. R.								1,856	-12,612	-14,423	-8,475	None.
75. Iowa Transfer.....								1,688	-893	-776	-800	None.
76. Massena Terminal.....	-394	-2,197	-3,717	-548	-2,392	-167	-308	1,409	-1,533		-976	None.
77. Massena Terminal.....	-2,086	-11,260	-9,153	1,373	-3,774	-3,971	-629	1,409	-5,323		-10,073	None.
78. Mine Rock.....	-19,379	-14,628	1,319	-13,034	-9,550	-7,721	-5,341	-12,156	-8,809	-8,345	-13,604	None.
79. St. Louis & San Francisco	878	400			-214		-1,800	-2,268	-10,383	-10,644	-11,523	None.
80. Oklahoma City Junction (Sold, 1930)												None.
81. Springfield Terminal.....	-5,286	-2,426	545	-2,890	-1,255	-1,301	-444	-600	-6,389	-201		None.
82. Dignon Terminal.....	-14,254	-189	-5,996	-5,689	-1,576	-12,256	-4,458	-7,591	-17,178	-322	-7,059	None.
83. Lake Erie & Fort Wayne *	-2,610	-6,377	-6,624	-5,696	-5,065	-12,556	-2,438	-2,433	-2,204			None.
84. Fort Wayne Union Ry. <sup>100</sup>	91	-3,733	-578	-4,065	-4,094	-1,992	-3,373	-2,314	-1,092	60	-10,723	None.
Total recapturable.....												\$4,202,175
Number of carriers, Class IV.....												29

<sup>99</sup> Began operations June 21, 1927.  
<sup>100</sup> Ceased operation Oct. 31, 1928.

<sup>99</sup> In Wabash, 1929.  
<sup>100</sup> Began operations June 1, 1925.



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US Cong. House. "Interstate..."

## Railroad legislation ..

NOV 2 1933

Nov 9 1933

Nov. 9

NOV 20 1935

7-26

Herbert Peres

410 Riverside Drive

И. Г. С.

AUG 12 1926

AUG 1 1946  
Herbert Spink

410 Kendrick

24

ATG 2544

MSH 03578

# NEH

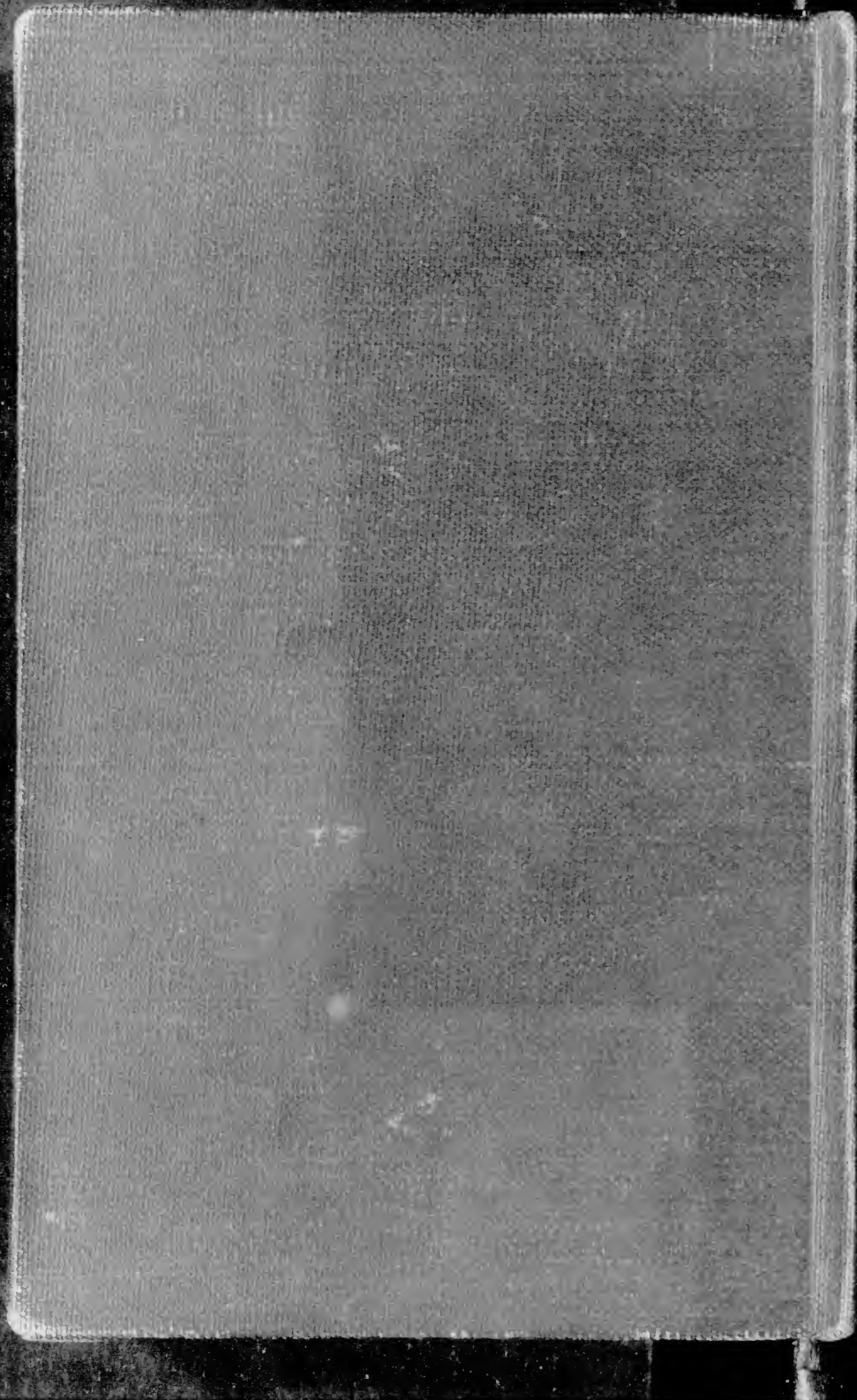
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